UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Tagore Law Lectures, 1897

THE LAW RELATING TO INJUNCTIONS IN INDIA

WITH

MODEL FORMS OF PLAINTS AND APPLICATIONS

BY

SIR JOHN GEORGE WOODROFFE, M.A., B.C.L.
Former Reader in Indian Law, University of Oxford and former Judge of the High Court of Judicature at Fort William in Bengal

REVISED AND ENLARGED EDITION BY

SALIL K. ROY CHOWDHURY, M.SC., LL.B.
Barrister-at-Law, formerly Judge, Calcutta High Court

and

H. K. SAHARAY
M.A. (Triple), M.com., LL.B., Ph.D. (Lond)
Barrister-at-Law, Lecturer, University College of Law, Calcutta University

S. C. SARKAR & SONS PRIVATE LTD. CALCUTTA

LAW COLLEGE LIBRARY Hare Road Unit

BOOKSELLERS & PUBLISHERS LTD. Calcutta

CALCUTTA
S. C. SARKAR & SONS
1988

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

First Edition 1900
Second Edition 1906
Third Edition 1912
Fourth Edition 1916
Fifth Edition 1929
Revised and Enlarged Edition 1988

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, xerography, or any information storage and retrieval system, without permission in writing from the publishers.

347·077 W846ed88Q2
[H2865]

GS22,900

Published by S. C. Sarkar & Sons Private Limited, 1C Bankim Chatterjee Street, Calcutta 700 073 and printed by P. K. Bose at Basusree Press, 189, Sri Aurobindo Sarani, Calcutta 700 006

CENTRAL LIBRARY

PREFACE TO REVISED AND ENLARGED EDITION

Five editions of this classic book were published between 1900 and 1928. Prefaces to all the editions were written by the illustrious author, Sir John G. Woodroffe, who passed away on the 17th day of January 1936. We have revised the 5th Edition, preface of which was written by the author himself being dated 1st day of July 1928. All the prefaces are printed in this *Revised and Enlarged Edition* which will indicate the origin, scope and object of this classic book on the *Law of Injunction*. Meanwhile, the name of the title has had to be changed, omitting the word 'British' since the days of the Raj are long over and India is now a free country.

With great hesitation and humiliation we have undertaken the task of revising this classic work of the celebrated author. Our endeavours have been to bring up to date the law on the subject so that the students, practitioners, jurists and judges may find it useful for their purposes whenever required. With that end in view, we have consulted, amongst others, Clark & Lindsell on *Torts*, 15th Ed., Halsburry's *Laws of England* 4th Ed., Sarkar's *Specific Relief Act*, 13th Ed., Gale on *Easement*, 15th Ed., Winfied & Jolowicz on *Tort*, 12th Ed., Salmond & Henston on the *Law of Torts*, 18th Ed., Kerr on *Injunction*, 6th Ed. Reprinted in 1981, Snell's *Principles of Equity*, 28th Ed., Iyer's *Law of Tort*, 8th Ed., and Kaityan's *Law of Easement*, 10th Ed. We have deleted the obsolete portions and re-written the branch of law of injunction whenever we thought it necessary having regard to the vast legislative changes, e.g., Civil Procedure Code, Criminal Procedure Code, Specific Relief Act and Limitation Act. We have also included the various principles for granting injunction, particularly interlocutory injunction as laid down by the Supreme Court of India and the House of Lords in England and made every effort to bring up-to-date materials and important case laws in appropriate places under the relative headings. But in doing so we have carefully and meticulously maintained the sequence and style of the learned author as far as possible.

Law of Injunction is the most important branch of legal relief available to a litigant practically in all spheres of litigation. Court's power to grant injunction is very wide but at the same time discretionary, for the exercise of which principles and guidelines have been laid down by the legislations, particularly the Civil Procedure Code and Specific Relief Act apart from the inherent power of the Court. The Mareva Injunction, Anton Piller Order and the principles laid down in the *American Cyanamide case* of the House of Lords have been discussed and included in this *Revised and Enlarged Edition* to bring the Law of Injunction up to date. In Constitutional Writ petition an interim order of Injunction is a very vital question which has been dealt with as a separate topic in this book amongst other modern requirements of the law of injunction in various fields, which have come up before the Court due to the complexities of modern life. As a matter of convenience, we have given reference to All India Reporter and All England Reporter as far as possible to make this book useful for the readers.

LAW COLLEGE LIBRARY Hastings Road Unit

CENTRAL LIBRARY

We have added in this edition various model forms of plaints and applications and also included the relevant sections of such statutes as CPC, CrPC, Specific Relief, Arbitration, Indian Easements, Copyright, Trade and Merchandise Marks, Companies and the Constitution of India with the object that the users may find those sections useful for ready reference without having to look elsewhere for them. Further, we have updated the work in case material till February 1988 and an Addenda has been provided for the purpose.

We are liable to make mistakes either by omission or commission in discharging our difficult task and we hope to be excused. We will be grateful to anyone who points out our mistakes, so that we may correct the same at the earliest opportunity.

We express our thanks and gratitude to the Publishers for their great help, encouragement and assistance by making available to us all the relevant material and also for printing and publishing this classic work of the illustrious author.

Bar Library Club
Calcutta High Court
February 20, 1988

Salil K. Roy Chowdhury
H. K. Saharay

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PREFACE TO FIRST EDITION

This first volume and that on the Law relating to Receivers in British India which I hope to have shortly ready for publication contain, with other matter, the substances of the Tagore Law Lectures delivered by me in the University of Calcutta during the close of the year 1896 and the commencement of the following year.

In the preparation of this volume I have consulted and made use of the following English and American text-books: "A Treatise on the Law of Injunctions," by R. H. Eden (London, 1821); "The Law and Practice of Injunctions," by C. S. Drewry (London, 1849); "The Law and Practice of Injunctions in Equity and at Common Law," by W. Joyce (London, 1872); "The Law of Injunctions," by F. Hilliard, 3rd edition (Philadelphia, 1874); "The Doctrines and Principles of the Law of Injunctions," by W. Joyce (London, 1877); "A Treatise on the Law and Practice of Injunctions," by W. W. Kerr, 3rd edition (London, 1888: the 4th edition of this text-book had not bee nissued when the present volume was completed); "A Treatise on the Law of Injunctions," by J. L. High, 3rd edition (Chicago, 1890); "A Treatise on Extraordinary Relief in Equity and at Law," by T. C. Spelling (Boston, 1893). I have not had the advantage of seeing Mr. Nelson's Law of Injunctions in British India which was published last month.

The text-books referred to on the Law relating to Receivers will be found stated in the Preface of the second volume.

It is hardly necessary to say that all these works (and particularly those published in the United States of America, in which country the jurisdiction by Injunction has been greatly, and perhaps excessively, extended to meet all the requirements of modern life) are of value to practising members of the profession for whom they were written. They, however, for the most part exhibit these branches of the Law of Procedure in such a lengthy and detailed manner as to make it difficult for the beginner to grasp the general principles upon which it is founded. The present work is published, according to the intention of the Tagore Trust, primarily, for students as were the lectures of which it is the outcome. While, therefore, I have cited all decisions of the Indian High Courts, which are not numerous, I have purposely abstained from crowding these pages with notes of English and American cases on matters of small detail and of infrequent occurrence which the mere student does not require, but which may be found by the practitioner when wanted in the standard works already mentioned. Notwithstanding this, the present work will, I hope, prove to be of assistance to the profession also.

My endeavour has been to state general principles accurately, and to explain them lucidly by the aid of selected decisions which are of authority and well in point. In this I have received much assistance from the Commentaries published by the late Mr. Justice Collett in 1882 and by Mr. Nelson in 1894, upon the Specific Relief Act (I of 1897), in which Act the Law Relating to Injunctions and Receivers in British India is largely contained.

14th May, 1900. J. G. W.

LAW COLLEGE LIBRARY

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PREFACE TO SECOND EDITION

This volume and that on the law relating to Receivers in British India, already published, contain, with other matter, the Substance of the Tagore Law Lectures delivered by me in the University of Calcutta during the close of the year 1896, and the commencement of the following year.

In the preparation of this volume I have consulted and made use of the following English and American text-books: "A Treatise on the Law of Injunctions," by R. H. Eden (London, 1821); "The Law and Practice of Injunctions," by C.S. Drewry (London, 1849); "The Law and Practice of Injunctions in Equity and at Common Law," by W. Joyce (London, 1872); "The Law of Injunctions," by F. Hilliard, 3rd Edition (Philadelphia, 1874); "The Doctrines and Principles of the Law of Injunctions," by W. Joyce (London, 1877); "Kerr's Standard Treatise on the Law and Practice of Injunctions;" "A Treatise on the Law of Injunctions," by J. L. High, 3rd Edition (Chicago, 1890); "A Treatise on Extraordinary Relief in Equity and at Law," by T. C. Spelling (Boston, 1893).

It is hardly necessary to say that all these works (and particularly those published in the United States of America, in which country the jurisdiction by Injunction has been greatly extended to meet all the requirements of modern life) are of value to practising members of the profession for whom they were written. They, however, for the most part exhibit these branches of the Law of Procedure in such a lengthy and detailed manner as to make it difficult for the beginner to grasp the general principles upon which it is founded. The present work is published, according to the intention of the Tagore Trusts, primarily, for students, as were the lectures of which it is the outcome. While, therefore, I have cited all decisions of the Indian High Courts, which are not numerous, I have purposely abstained from crowding these pages with notes of English and American cases on matters of small detail and of infrequent occurrence which the mere student does not require, but which may be found by the practitioner when wanted in the standard works already mentioned. Notwithstanding this, the present work will, I hope, prove to be of assistance to the profession also.

My endeavour has been to state general principles accurately and to explain them lucidly by the aid of selected decisions which are of authority and well in point. In this I have received much assistance from the Commentaries published by the late Mr. Justice Collett in 1882, and by Mr. Nelson in 1894, upon the Specific Relief Act (I of 1877), in which Act the Law relating to Injunctions and Receivers in British India is largely contained. The Indian practitioner is also referred to Mr. Nelson's Law of Injunctions in British India. In the preparation of this second Edition I have incorporated the cases decided and reported since the first.

The 1st January, 1906. J. G. W.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

PREFACE TO THIRD EDITION

Since the last Edition was published in 1906, important changes in the Law of Injunctions have been introduced by the Code of Civil Procedure (Act V of 1908). These and the reported decisions up to the month of August 1912 have been incorporated in this Edition: and a new Index has been provided.

F. J. M.

PREFACE TO FOURTH EDITION

I have noted either in the text or list of Addenda the Indian cases up to and including Vol. 42 of the I. L. R., Calcutta, Vol. 38 of the same reports Madras, Vol. 37 of the same reports Allahabad, and Vol. 39 of the same reports Bombay; that is to the close of the year 1915. I have included also some cases taken from the English Courts, which have been decided since the last Edition. Since the publication of the third Edition a new (fifth) Edition of Kerr's Injunctions has been issued. Whilst retaining the references to the fourth Edition of that book I have added references to the new Edition which includes other new English decisions which it has not been thought necessary to quote.

February, 1916.

J. G. W.

CENTRAL LIBRARY

PREFACE TO FIFTH EDITION

THIS volume and that on the law relating to Receivers in British India contain, with other matter, the substance of the Tagore Law Lectures delivered by me in the University of Calcutta during the close of the year 1896, and the commencement of the following year.

In the preparation of this volume I have consulted and made use of the following English and American text-books: "A Treatise on the Law of Injunctions," by R. H. Eden (London, 1821); "The Law and Practice of Injunctions," by C. S. Drewry (London, 1849); "The Law and Practice of Injunctions in Equity and at Common Law," by W. Joyce (London, 1872); "The Law of Injunctions," by F. Hilliard, 3rd Edition (Philadelphia, 1874); "The Doctrines and Principles of the Law of Injunction," by W. Joyee (London, 1877); "A Treatise on the Law of Injunctions," by J. L. High, 3rd Edition (Chicago, 1890); "A Treatise on Extraordinary Relief in Equity and at Law," by T. C. Spelling (Boston, 1893), and the sixth and last Edition of Kerr's Standard Treatise on the Law and Practice of Injunctions (London, 1927).

It is hardly necessary to say that all these works (and particularly those published in the United States of America, in which country the jurisdiction by Injunction has been greatly extended to meet all the requirements of modern life) are of value to practising members of the profession for whom they were written. They, however, for the most part exhibit these branches of the Law of Procedure in such a lengthy and detailed manner as to make it sometimes difficult for the beginner to grasp the general principles upon which it is found. The present work is published, according to the intention of the Tagore Trusts, primarily, for students, as were the lectures of which it is the outcome. While, therefore, I have cited all decisions of the Indian High Courts, which are not numerous, I have purposely abstained from crowding these pages with notes of English and American cases on matters of small detail and of infrequent occurrence which the mere student does not require, but which may be found by the practitioner when wanted in the standard works already mentioned. Notwithstanding this, the present work will, I hope, prove to be of assistance to the profession also.

My endeavour has been to state general principles accurately and to explain them lucidly by the aid of selected decisions which are of authority and well in point. In this I have received much assistance from the Commentaries published by the late Mr. Justice Collett and by Mr. Nelson upon the Specific Relief Act (I of 1877), in which Act the Law relating to Injunctions and Receivers in British India is largely contained. The Indian practitioner is also referred to Mr. Nelson's Law of Injunctions in British India. In the preparation of this fifth Edition I have incorporated in the text cases decided and reported since the last Edition up to the end of June 1928. Subsequent cases will be found in the Addenda.

I wish to thank Mr. Tapanmohan Chatterji, Barrister-at Law, for help rendered in the preparation of this Edition and the correction of the proofs.

The 1st July, 1928.

J. W.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

CONTENTS

		Page
	PREFACE TO REVISED AND ENLARGED EDITION	[3]
	PREFACE TO FIRST EDITION	[5]
	PREFACE TO SECOND EDITION	[6]
	PREFACE TO THIRD EDITION	[7]
	PREFACE TO FOURTH EDITION	[7]
	PREFACE TO FIFTH EDITION	[8]
	TABLE OF CASES	[19]
	BIBLIOGRAPHY	[51]
	ADDENDA	[53]

INTRODUCTORY

1.	Present Statute Law relating to the subject in India	1
	Previous Law	2
2.	Is and was founded on principles being the same as those of English Law	3
3.	Assistance of Foreign decisions	4
4.	The issue of Injunctions is a form of specific relief	6
5.	Meaning of term "specific relief"	6
6.	Preventive relief	7
7.	Reliefs by specific performance, injunction, and receiver, belong to the same branch of the Law	7
8.	But there is a distinction between the remedies	8
9.	General principles upon which an Injunction is issued	9
10.	Protective relief	10
11.	The grant of preventive or protective relief is purely discretionary	11

CHAPTER I

INJUNCTIONS GENERALLY

12.	Meaning of term "Injunctions"	12
13.	Forms of Injunctions	13
	(i) Forms of Injunctions	13
	(ii) Perpetual	17
	(iii) Mandatory	18
14.	Origin of the equitable relief by Injunction	21
15.	Subject-matter of Injunctions	21
16.	Its classification	23
	Difference between stay order and order of injunction	25
17.	Parties	26
	(i) In whose favour an Injunction will be granted	26
	(ii) Against whom an Injunction may be granted	27
18.	Essentials to the grant of relief by way of Injunction	29
	(i) Relief cannot be granted merely to enforce a penal law	29

LAW COLLEGE LIBRARY

CENTRAL LIBRARY

		Page
	(ii) There must be a pending civil action	30
	(iii) Cognisance of the action must not be barred	31
	(iv) The Court must otherwise have jurisdiction to try the suit	32
19.	"Equity acts in personam"	32
20.	The application of this maxim in India	34
	Rajmohun Bose v. East Indian Railway Co. and Moolji Jaitha & Co. v. K. S. & W. Mills Co.	36
	Juggodumba Dossee v. Puddomoney Dossee	36
21.	Must be considered with reference to the statutory jurisdiction	37
	Delhi and London Bank v. Wordie	38
22.	Jurisdiction to issue Injunctions	39
23.	The exercise of jurisdiction is discretionary	42
24.	Courts by which an Injunction may be granted	44
	(i) Courts of Original Jurisdiction	44
	Suit for setting aside a decree in an earlier suit and interim injunction in execution of a decree	45
	(ii) Courts of Appellant Jurisdiction	47
	(iii) Courts of Revisional Jurisdiction	48
25.	Enforcement of orders and decrees issuing Injunction	48
26.	Effect and operation of an Injunction	49
27.	Breach of an Injunction	51
28.	Compensation for issue of wrongful Injunction	54

CHAPTER II

INJUNCTIONS GENERALLY—(contd.)

29.	General rules governing the grant of relief by injunction	55
	(i) The applicant must show a fair prima facie case in support of the right claimed	57
	(ii) And an actual or threatened violation of that right	59
	(iii) Productive of irreparable or at least serious damage	62
	Anantnath Dey v. Mackintosh	63
	(iv) His conduct must be such as not to disentitle him to assistance	66
	(a) It should be fair and honest	67
	(b) And in particular there must be no acquiescence	68
	(c) Or delay	71
	(v) There must be a greater convenience in granting than in refusing the Injunction	75
	(vi) And equally efficacious relief must not be obtainable by any other usual except in case of breach of trust	76
	American Cyanamid case	78
32.	Mandatory Injunctions	80
33.	Relief which may be given in a suit for an Injunction	84
	(i) An Injunction	84
	(ii) Damages	84
	(a) If the plaintiff be held entitled to damages, they must be given	91

CENTRAL LIBRARY

		Page
	(b) Assessment of, an enquiry as to, damages	91
	(iii) Combination of damages and Injunction	92
34.	If relief be given it must be of one or other of the preceding kinds	93

CHAPTER III

Practice Relating to Injunctions

35.	Means by which an Injunction is obtained	94
	(i) Injunctions are granted upon suit	94
	(ii) In urgent cases by motion ex parte without notice, and before or after appearance	95
	(iii) In other cases by motion for a rule nisi or upon notice before or after appearance	97
36.	Interim orders	97
37.	Injunction upon terms	98
38.	Evidence in support of application	101
39.	Hearing of application	103
40.	Discharge, variance, and dissolution of Injunction	105
41.	Appeal in the matter of Injunctions	108
42.	Reference, Revision and Review in the same matter	109
43.	Cost, Court-fee	110
44.	Enforcement or orders and decrees granting Injunctions	111
45.	Limitation	111

CHAPTER IV

Injunctions in Respect of Judicial Proceedings

46.	Control and stay of proceedings	113
47.	Injunction in restraint of proceeding	113
	(i) In England	113
	(ii) In India prior to the Specific Relief Act	115
48.	Present law	117
	(i) Contemplated proceedings may be stayed	119
	(ii) But not pending proceedings unless there is danger of	120
	(iii) Multiplicity of proceedings	120
	(iv) And the proceedings stayed are those of a Subordinate Court	121
49.	Wrongful sale in execution of decree	122

CHAPTER V

Injunctions Against Alienation, Waste. Damage or Fraudulent Disposition of Property Pendente Lite

50.	Injunctions against alienation, waste, damage or fraudulent disposition of property pendente lite	127
	(i) Quia timet action	128

CENTRAL LIBRARY

		Page
	(ii) Injunctions against waste, damage or alienation pendente lite	128
	(iii) Fraudulent disposition of property by the defendant pendente lite	132
50a	Mareva Injunction	133
50b.	Anton Piller Order	135
51.	Appeal from such Injunctions	136

CHAPTER VI

Injunctions in the Case of Obligations Arising from Contract, Transfer of Property, or Trust

52.	Contracts, Transfers of Property and Trusts	138
	(i) Law in India relating thereto	139
	(ii) And the relief applicable in respect thereof	141
53.	Relief by Injunction	143
	(i) Temporary	143
	Arbitration Proceeding	143
	(ii) Perpetual	144
	(iii) Mandatory	145
54.	Relief by damages	146
55.	Conditions upon which Injunctions in cases of contract will be granted	146
	(i) Jurisdiction	146
	(ii) The agreement must constitute a contract	148
	(a) Void agreement	149
	(b) Voidable agreements	150
	(iii) Such contract must not be one, the performance of which would not be specifically enforced	150
	(a) Contracts which cannot be specifically enforced	151
	(1) Personal service	153
	(2) Sale of goodwill	154
	(3) Uncertainty of term in a contract	154
	(4) Volition of parties	154
	(5) Vague agreement	154
	(b) No Injunction will be granted in respect of the breach of such contracts	157
	(c) Except in certain cases of negative agreements coupled with affirmative agreements not specifically enforceable	157
	(iv) The operation of the law relating to the registration of documents must not be affected	157
56.	Varieties of Covenants	161
	(i) Affirmative	161
	(ii) Negative	161
	(iii) Affirmative coupled with negative	164
	Subba Naidu v. Haji Badsha Shahib	168
57.	Specific performance of affirmative agreements	169

CENTRAL LIBRARY

		Page
58.	Injunctions in aid of and ancillary to Specific Performance	170
59.	Injunction to restrain the breach of negative agreements	171
60.	In the case of obligations arising in contract, the Court will be guided by the rules and provisions relating to Speciffic Performance	171
	(i) Cases in which Specific Performance is enforceable	171
	(ii) Contracts of which the subject has partially ceased to exist	173
	(iii) Specific Performance of part of Contract	173
	(a) Where part unperformed is small	173
	(b) Where part unperformed is large	174
	(c) Independent part of contract	174
	(iv) Liquidation of damages is not a bar to Specific Performance	175
	(v) Of the discretion of the Court	175
	(a) Delay	175
	(b) Unfair advantage	176
	Callianji Harjivan v. Narsi Tricum	176
	(c) Hardship	178
	(d) Partial performance	179
	(vi) For whom contracts may be specifically enforced	179
	(vii) For whom contracts cannot be specifically enforced	180
	(a) Personal bar to the relief	180
	(b) Contracts to sell property by one who has no title or who is a voluntary settlor	180
	(viii) Non-enforcement except with variation	181
	(ix) Against whom contracts may be specifically enforced	182
	(x) Against whom contracts cannot be specifically enforced	183
61.	Injunctions in certain particular cases of contract of transfer of property	183
	(i) Injunctions between partners	185
	(a) Without a view to dissolution	187
	(b) Pending and after dissolution	187
	(ii) Injunctions against Companies	188
	(a) Acts affecting the public	188
	(b) Third parties	188
	(iii) Injunctions against clubs, societies, caste, etc.	190
	(a) Clubs and societies	191
	(b) Castes	193
	(iv) Injunction between mortgagor and mortgagee	194
	(a) On behalf of mortgagor	195
	(b) On behalf of mortgagee	196
	(c) Third parties	197
	(d) Waste	197
	(e) Injunction between lessor and lessee	197
	(f) Injunction between donor and donee	198
62.	Injunutions in cases of trust or other fiduciary relations	198
	(i) Injunctions against trustees	199

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

		Page
	(ii) Injunctions against executors and administrators	203
	(iii) Injunctions against Corporations	205

CHAPTER VII

INJUNCTIONS IN CASES OF TORT

63.	Torts	209
64.	Who may sue and be sued in respect of torts	211
65.	Remedies in case of tort	212
	(a) Damages	212
	(b) Injunctions	213
66.	Principles upon which an Injunction will be granted in cases of tort	214
	Limitation	218

CHAPTER VIII

INJUNCTIONS IN CASES OF DEFAMATION, MALICIOUS WORDS AND SLANDER OF TITLE

67.	Personal Injuries	219
68.	Defamation	219
	(i) Libel	219
	(ii) Slander	220
69.	Malicious words and slander of title	220
70.	Injunctions in cases of defamation, malicious words and slander of title	221

CHAPTER IX

INJUNCTIONS AGAINST TRESPASS AND WASTE

71.	Trespass	225
72.	Injunctions against trespass	227
73.	Who may sue and be sued in respect of trespass	231
74.	Waste	232
75.	Injunctions against waste	234
76.	Against whom such Injunctions will be granted	235
	(i) Tenants for life or years, or in tail	235
	(ii) Hindu female heirs	235
	(iii) Landlord and Tenant	235
	(a) Agricultural lease—Waster in respect of	236
	(i) Buildings	239
	(ii) Excavations	241
	(iii) Trees	242
	(iv) Cultivation	243
	(b) Non-agricultural leases	243
	(iv) Dependent talookdar	247
	(v) Mortgagor and Mortgagee	247

CENTRAL LIBRARY

		Page
	(vi) Vendors, purchasers and others	248
77.	Waste and trespass by co-sharers	248
	(i) Co-sharers	248
	(ii) Waste and trespass by co-sharers	249
	(a) Joint user	249
	Lachmeswar Singh v. Manowar Hossein	250
	(b) Abuse of joint property	250
	(iii) Remedies in respect of the abuse of joint property	253
	(a) Partition	253
	(b) Declaration of right; account of profit; and damages	254
	(c) Decree for joint possession	254
	(d) Injunction	255
	(iv) Principles upon which Injunctions are granted in the case of co-sharers	255
	(a) Cultivation	259
	(b) Buildings	260
	(c) Excavations	264
	(d) Other injurious acts	265
78.	Persons for whom injunctions against waste may be granted	266
79.	Account in case of waste	266

CHAPTER X

INJUNCTIONS AGAINST NUISANCES

80.	Nuisances generally	268
81.	Injunctions against nuisances	269
82.	Nuisances in respect of natural rights	277
	(i) Air	277
	(ii) Light	277
	(iii) Water	277
	(iv) Support	279
83.	Nuisances in respect of easements	280
	(i) Air	282
	(ii) Injunctions against obstruction of air	286
	(iii) Light	286
	(iv) Injunction against obstruction of light	290
	(v) Support—Injunctions against withdrawal of support	304
	(vi) Water—Injunctions in respect of rights to water	304
	(vii) Way—Injunctions against obstruction of way	306
	(viii) Privacy—Injunctions to preserve privacy	309
84.	Mandatory Injunctions	310

CHAPTER XI

INJUNCTIONS AGAINST INFRINGEMENT OF COPYRIGHT, TRADE-MARKS AND PATENTS

85.	Copyright	315
86.	Injunctions against infringement of copyright	318

CENTRAL LIBRARY

		Page
87.	Trade-mark—Trade name	328
88.	Injunctions against infringement of trade-marks	332
89.	Patents	337
90.	Injunctions atainst infringement of Patents	341

CHAPTER XII

Injunctions to Stay Wrongful acts of a Special Nature

91.	Summary of preceding chapters	344
92.	Injunctions to stay wrongful acts of a special nature	344
93.	Injunction in miscellaneous matters	349

MODEL FORMS OF PLAINTS AND APPLICATIONS

1.	Suit for an injunction restraining execution of a decree	353
2.	Suit for prohibitory injunction restraining breach of contract	353
3.	Suit by landlord against tenant for prohibitory injunction restraining breach of covenant	353
4.	Suit for injunction restraining an election	354
5.	Suit for an injunction restraining an act of dispossession	356
6.	Suit for mandatory-cum-prohibitory injunction by a landlord against a tenant	357
7.	Suit for an injunction restraining acts of waste	358
8.	Suit for an injunction against the obstruction and diversion of the course of water	358
9.	Suit against electric supply corporation for correction of defective meter	359
10.	Suit against Municipal Corporation for illegal and wrong assessment of Tax	360
11.	Suit for injunction restraining the defendant from creating nuisance	361
12.	Suit by a purchaser of the goodwill of a business	362
13.	Application under Order 39 rules 1 and 2 C.P.C. for temporary injunction	363
14.	Application for injunction under section 41 of the Arbitration Act, 1940	364
15.	Application for injunction in writ	364
16.	Claim for infringement of the plans and the design of house	366
17.	Claim for infringement of musical work by performance in public against performer and lessee of hall	367
18.	Claim for infringement by dramatising and performing work against dramatist and the manager of a theatre	367
19.	Claim for infringement of a work of joint authorship against author, publisher and bookseller	368
20.	Claim for infringement by authorising publication by one joint author against the other	370

CENTRAL LIBRARY

		Page
21.	Claim for infringement of photograph	370
22.	Claim for infringement of a film by author of dramatic work and by the company owing a film of the same work against makers, renters and exhibitors	370
23.	Claim for infringement by the manufacture of tape-records	372
24.	Claim for infringement of Patents	373
25.	Passing off by use of trading name for goods	373
26.	Infringement of registered Trade Mark and Passing off by use of name	374
27.	Claim for declaration, damages, and injunction in respect of interference with right of way claimed by prescription	375
28.	Petition for Ad interim injunction in Suit for Injunction	376

RELEVANT SECTIONS OF STATUTES

1.	Code of Civil Procedure, 1908	378
2.	Specific Relief Act, 1963	381
3.	Code of Criminal Procedure, 1973	383
4.	Indian Easements Act, 1882	386
5.	Copyright Act, 1957	386
6.	Trade and Merchandise Marks Act, 1958	387
7.	Arbitration Act, 1940	387
8.	The Companies Act, 1956	389
9.	Constitution of India	389
INDEX		391

CENTRAL LIBRARY

CENTRAL LIBRARY

TABLE OF CASES

A

Abdul Hussain *v.* Ram Charan, 19
Abdul Rahim *v.* Tufan Gazi, 11
Abdul Rahman *v.* Abdul Kralil, 144
Abdul Rahman *v.* Emile, 312
Abdullah Khan *v.* Banke Lal, 124
Abdul Rahiman Saheb *v.* Ganapathi Bhatta, 109
Abdul Salar *v.* Manilal, 154
Abdul Sattar *v.* Mohd. Sayeed, 118
Abu Bakker *v.* Parimal Prova, 52
Abzul Miah *v.* Nasir Mahommed, 309
Achul Mahta *v.* Rajun Mahta, 306
Acrow Automation Ltd *v.* Rex Chainbelt Inc., 243
Adaikkala Thevan *v.* Imperial Bank, 53
Adair *v.* Young, 61
Adakkalam *v.* Theethan, 158
Adams *v.* Scott, 195
Adamson *v.* Arumugum, 27
Addakkalam *v.* Theetham, 161
Adivera Denabandhu Patrudu *v.* Lockanadhasami, 237
Advocate-General, Bihar *v.* M. P. Khair Industries, 53
Aftab Ahamad *v.* Bantul Fatma, 14
A. K. Sanyal *v.* Chitta Ranjan Basistha, 96 107
Akilandammal *v.* S. Venkatachelli Mudali, 79
Akilandammal *v.* Venkatachala Mudallib, 244
Aldin *v.* Latimer, 283, 290
Allen *v.* Ayres, 87
A. Milton Co. *v.* Ojha Automobile Engineering Co., 125
Amarendranath Dey *v.* Baranagore Jute Co, 270
Ambarnath Mills *v.* Godbole, 165, 166
Amber Size Ltd. *v.* Menzil, 202
American Cyanamid Co. *v.* Ethicon Ltd., 78, 104, 216, 327, 346
Amir Dulhin *v.* Administrator-General of Bengal, 117, 121, 125
Amiya Prosad *v.* Bejoy Krishna, 96, 97
Amolak Ram *v.* Saheb Singh, 73, 97, 124
Anandrav Bhikaji *v.* Shankar Daji Charya, 27
Anath Nath Dey *v.* Mackintosh, 63, 64, 75, 90, 99 119, 122, 238, 241
Anath Nath Deb *v.* Galstaun, 301
Anant Ramrav *v.* Gopal Balvant, 258
Anderson *v.* Juggodumba Dabi, 306
Andrae *v.* Redfield, 14
Andrews *v.* Salmon, 192
Anil Kumar *v.* Kashinath, 57
Anton Piller K. G. *v.* Manufacturing Processes Ltd., 135, 202, 325
Anundcoomar Mookerjee *v.* Bissonath Banerjee, 238, 241, 242

CENTRAL LIBRARY

Apaji Palit *v.* Apa, 77, 101
Appalanarasimha *v.* Seethayamma, 45
Appaya *v.* Padappa, 193, 194
Appu *v.* Raman, 41, 118, 119, 120, 121, 126
Archbold *v.* Scully, 74
Archibald Orr Ewing *v.* Chooneeloll Mullick, 332
Armory *v.* Delamirie, 226
Armstrong *v.* Armstrong, 115
Armstrong *v.* Sheppard & Short Ltd., 229
Arthur *v.* Lamb, 256
Arundel *v.* Phillips, 202
Ashan Ali *v.* Hafizah Ali, 212
Ashburton *v.* Pope, 345
Asher *v.* Whitlock, 226
Ashew *v.* Townsend, 45
Aslam *v.* Mayor, etc. of Southampton, 22
Aslatt *v.* Corporation of Southampton, 213
Athikaratu Nanu Menon *v.* Erathanikat Komu Nayar, 74
Athur Ali Khan *v.* Sekundur Ali Khan, 279
Atty.-Gen. *v.* Acton Local Board, 59
Att.-Genl. *v.* Birmingham, etc. Drainge Board, 28, 100
Att.-Gen. *v.* Boyle, 50
Att.-Gen. *v.* Briggs, 69
Att-Genl *v.* Doughty, 285
Att.-Gen. *v.* Great Northern Ry. Co., 50
Att-Gen. *v.* Manchester and Leeds Ry. Co., 50
Att.-Gen. *v.* Sheffield Gas Co., 30, 45, 62, 105
Atty-Genl *v.* Colney Hatch Lunatic Asylum, 274
Attorney General *v.* Chaudry, 346
Attorney-General *v.* Corporation of Manchester, 273
Attorney-General *v.* Eastlake, 208
Attorney-General *v.* Harris, 346
Attorney-General *v.* Hunter, 271
Attorney-General *v.* Mayor, 14, 208, 271
Attorney-General *v.* Metropolitan Board of Works, 20
Attorney General *v.* Nichol, 86,87, 290, 295
Attorney-General *v.* P. Y. A. Quarries Ltd., 276
Attv.-Gen. *v.* Forbes, 59
Atty-Genl *v.* Shrewsbury Bridge Co., 308
Assur Purshotam *v.* Ratanbai, 75
Assistant Collector of Central Excise, Chandannagar West Bengal *v.* Dunlop India Ltd., 26, 347
Associated Cement Co. Ltd. *v.* State of Rajasthan, 75
Astro Exito Navegacion S. A. *v.* Southland Enterprise Co. Ltd., 20
Asstt-Collector, C. E. *v.* Dunlop India Ltd., 41
Augustine *v.* Medlycott, 27
Avory *v.* Andrews, 50
Aylwin *v.* Evans, 110
Aynsley *v.* Glover, 42, 85, 87, 293, 295, 299, 300, 310
Azizan *v.* Matuk Lall Sahu, 126

CENTRAL LIBRARY

B

B. Mishra *v.* B. Dixit, 52
B. K. Choudhury *v.* P. V. Bhagwat, 53
B. S. Augla Co. (P) Ltd. *v.* Kaluram Mahadeo Prasad, 57
Baboo Chumroo Singh *v.* Mullick Khyrub Ahmed, 279
Baboo Indurdeonarain Singh *v.* Toolseenarain Singh, 261, 263, 264
Bacon *v.* Jones. 75
Badal Singh *v.* Birch, 6
Badische Aniline & Soda Fabrik *v.* Maneckji Shapurji Katrak, 330, 335
Bagram *v.* Khettranath Karformah, 277, 278, 284, 285, 287, 288
Bai Amba *v.* Pranjivandas Dullabh Ram, 40
Bai Bhicaji *v.* Perojshaw Giranji, 269
Bai Kashi Bai *v.* Purshottam Keshavji, 277, 304
Baidyanath *v.* Sudha, 153
Bailay *v.* Hobson, 256
Baijnath *v.* Mansukrai, 157
Baird *v.* Wells 191, 192
Baker *v.* Sutherland, 316
Bala *v.* Mahasu, 314
Ball *v.* Ray, 278
Balls *v.* Strutt, 200
Balmukand *v.* State of M.P., 108
Balu *v.* Maharu, 81
Bamford *v.* Turnley, 277
Bande Ali *v.* Gokul Miser, 45
Bank of India *v.* Sital Chandra Das, 214
Bankart *v.* Houghton, 69
Bankart *v.* Tenant, 70
Bangalore Water Supply & Sewarage Board *v.* A. Rajappa, 5
Bansi *v.* Sewakisan, 118
Baradakanta *v.* Rigistrar, Orissa High Court, 53
Bari Mangu *v.* Bai Vijili, 154
Barker *v.* North Staffordshire Railway Co., 106
Barlow *v.* Gobindram, 333, 334
Barrow *v.* Archer, 283, 284, 285, 286, 287, 302
Basamma *v.* Peerappa, 214
Basanta Lal *v.* Batul Bibi, 112
Basawasvarasvami *v.* Billary Municipal Council, 305
Baslingappa Parappa *v.* Dharmappa Basapa, 309, 345
Bass *v.* City of Shakopee, 29
Bass *v.* Gregory, 283
Bassett *v.* Bassett, 351
Baswantapa Shidapa *v.* Ranu, 73
Baxendale *v.* Seale 178
Baxter *v.* Bower, 82
Baxter *v.* Bowen, 311, 312
Baylis *v.* Grout, 201
Beddow *v.* Beddow, 133
Beer *v.* Ward, 201

CENTRAL LIBRARY

Beer Chunder Jhoograj Gohasnee *v.* Hogg, 116
Begg Dunlop *v.* Satischandra, 57, 58, 62, 75, 226, 227
Behari Lal *v.* Ghisa Lal, 76, 345
Bell *v.* Travco Hotels Ltd., 213
Beni Madho *v.* Ram Nath, 43
Beni Madhub Das *v.* Ramjay Rokh, 307, 312
Benode Coomaree Dossee *v.* Soudaminey Dossee, 3, 59, 71, 73, 75, 81, 82, 83, 89, 91, 92, 229, 288, 310, 312
Berney *v.* Sewell, 197
Besant *v.* Narayaniah, 20
Besant *v.* Wood, 119
Beswick *v.* Beswick, 154
Betts *v.* Neilson, 91
Bhagwan Das *v.* Muhammad Yahia, 245
Bhagwan Das *v.* Sakhdei, 111
Bhaishankar Nanabhai *v.* Morarji Keshavji, 28, 105
Bharat Starch & Chemical Ltd. *v.* Mill Stores Ltd., 117
Bhaygo Mutty Bibee *v.* Mahomed Wasil, 254, 255
Bheer Chunder Jhoograj Goshanee *v.* Hogg, 41
Bhikaji Sabaji *v.* Bapu Saju, 23, 149, 186
Bhikhari *v.* Baidyanath, 83
Bholai *v.* Rajah of Bansi, 238, 239, 240, 241, 242
Bhramar Lal *v.* Nanda Lal, 226
Bhuban Mohan Banerjee *v.* J. S. Elliott, 287, 302
Bhudev *v.* Kalachand, 22, 213, 314
Bhupati *v.* Rajah Rangayya Appa Rau, 241
Bhupendra *v.* Rajeshwar, 212
Bhupendranath *v.* Ranjit Singh, 24, 193
Bibee Jaun *v.* Meerza Mahomed Hadee, 34
Bindu Basini Chowdhrani *v.* Jahnabi Chowdhrani, 59, 60, 61, 214, 215, 304
Bird *v.* Lake, 28, 103
Birmingham, Dudley & District Banking Co. *v.* Ross, 290
Blackemore *v.* Glamorganshire, 14
Blacquiere *v.* Ramdhone Doss, 35
Blair *v.* Deakin, 270
Bloxam *v.* Metropolitan Railway, 62
Bodit Reddy *v.* Appu Goundan, 84
Bolivinter Oil S. A. *v.* Chase Manhattan Bank, 184
Bool Chand *v.* Kurukshetra University, 153
Bonnard *v.* Perryman, 220, 222, 223
Bonner *v.* Great Western Railway Co., 20
Borrodaile *v.* Chainsook Buxiram, 115
Bottle *v.* Stanley, 50
Boyd *v.* State, 50
Boyson *v.* Deans, 214, 297, 298
Brader *v.* Saillard, 278
Braham *v.* Bustard, 334
Branch *v.* Supervisors, 58
Brand *v.* Mitson, 95

CENTRAL LIBRARY

Brojendra Kumar Rai Choudhuri *v.* Rup Lall Doss, 2, 118, 122, 123, 124
Brojendra Kumar *v.* Jitendra Chandra, 345
Brojomohun Doss *v.* Hurrololl Doss, 27, 203
Brown *v.* Frost, 28
Bryanston Finance Ltd. *v.* Vries, 190
Buchanan *v.* Rucker, 192
Buddinath Paul Chowdry *v.* Bycauntnath Paul Chowdry, 37
Bull *v.* Bull, 226
Bunsee Sahoo *v.* Kali Pershad, 279
Burdott *v.* Hay, 106
Burnard *v.* Haggis, 212
Butler *v.* Freeman, 30

C

C. B. S.U. K. Ltd. *v.* Lambert, 135
C. I. T., Madras *v.* Gajapathy Naidu, 5
C. I. T. Kerala *v.* Malayalam Plantation Ltd., 5
C. P. Angadi *v.* Y. S. Hirannaya, 104
C. Siddeswaram *v.* R. S. Pillai, 343
Cadiz Water Works Co. *v.* Barnett, 119
Caird *v.* Sime, 202
Cairncross *v.* Lorimer, 69
Calcutta Medical Stores *v.* Stadmed P. Ltd., 52
Callianji Harjivan *v.* Narsi Tricum, 3, 4, 11, 42, 66, 91, 92, 110, 151, 152, 162, 163, 164, 166, 167, 168, 175, 176, 177, 179
Campbell *v.* Scott, 63
Carlisle Nephews & Co. *v.* Ricknauth Bucktearmull, 163
Carr *v.* Morice, 44
Carroll *v.* Temado Ltd, 341
Carron Iron Co. *v.* Maclaren, 33, 117
Carteret *v.* Pettus, 34
Casamajor *v.* Sirode, 28, 248
Castelli *v.* Cork, 45, 105
Catton *v.* Wyld, 91
Cawasha *v.* Prafulla, 271
Cayne *v.* Global Natural Resources, 76
Century Traders *v.* Roshanlal Duggar & Co, 340
Chabildas *v.* Municipal Commissioner of Bombay, 61, 94, 102, 228, 231
Chandidat Jha *v.* Padmanand Singh Bahadur, 9, 14, 43, 48, 57, 58, 59, 102, 129, 132
Chandra Nath Pal *v.* Sree Gobind Chowdhury, 83, 99
Chandu Lal *v.* Delhi Municipality, 57
Charles Hubert Kinch *v.* Edward Kick Walcot, 104
Charlesworth *v.* Macdonald, 163
Charu Surnokar *v.* Dokouri Chander Thacoor, 281, 282, 306
Chastey *v.* Ackland, 277
Chatarpat Sharma *v.* Jagganath Das, 332

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Chaturbhuj *v.* Mansukram, 3, 80, 170
Chaussey *v.* Jamma Flour Mills, 80
Cheavin *v.* Walker, 337
Chedambaram Chetty *v.* Karunalyavalangapuly, 160
Chesterfield *v.* Janseen, 150
Chetan Charan Das *v.* Balbhadra Das, 205
Chhunamal *v.* Moolchand, 4
Chief Constable of Hampshire *v.* A & Ors., 185
Child *v.* Douglas, 62, 75
China Surya Rao *v.* Surya Chandra Rao, 158
Chintaman Pannalal *v.* Bomanji Mancherji Modi, 161
Chintamanrav Narayan Gole *v.* Bala, 39
Christie *v.* Davey, 278
Chundee Churn Ray *v.* Shiv Chunder Mundul, 281
Chunder Kant Roy *v.* Krishna Sunder Roy, 182
Chunilal *v.* Surat City Municipality, 43, 207
Chunilal Maneklal *v.* Khirpashankar Bhagranji (1906), 24, 205
Chunilal Mancharam *v.* Manishankar Atmaram, 3, 4, 282
Chunnu Dat Vyas *v.* Babu Nandan, 32, 344
Circle Restaurant & Co. *v.* Lavery, 119
City of London Brewery Company *v.* Tennant, 283, 311
Clarke *v.* Ramuz, 248
Clarke *v.* Hart, 72
Clayton *v.* Attorney-General, 14
Clement *v.* Melony, 301
Clements *v.* Welles, 28
Clifton *v.* Robinson, 107
Coker *v.* Simpson, 62
Cockey *v.* Carroll, 234
Colebourne *v.* Colebourne, 95
Collard *v.* Marshall, 212, 222, 224
Columbus *v.* Storey, 63
Colyer *v.* Finch, 34
Commr of Rishira Municipality *v.* Anil Kr. Mustaffi, 118
Congleton *v.* Mitchell, 266
Cooper *v.* Crabtree, 302
Cooper *v.* Whitingham, 59
Const. *v.* Harris, 29
Cope *v.* Evans, 334
Corn Products Refining Co. *v.* Shangrila Food Products Ltd. 330
Corporation of Birmingham *v.* Allen, 280
Corporation of Calcutta *v.* Bejoy Kumar, 118
Cory *v.* Thames Iron &c., Company, 91
Cory *v.* Yarmouth and Norwich Railway Co., 63
Cotton Corpn. of India *v.* United Industrial Bank, 120
Coulson *v.* Coulson, 222
Court *v.* Harris, 186
Court of Wards *v.* Rajah Leelanund Singh, 279
Cowley *v.* Byas, 60, 61

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Crest Homes Ltd. *v.* Ascott, 223
Crisp *v.* Watson, 35, 147
Crockford *v.* Alexander, 248
Croft *v.* Day, 333
Crossley *v.* Lightowler, 272
Crowdie *v.* Bhikdaree Singh, 253, 259
Crowdie *v.* Kullar Chowdhry, 159
Crowdy *v.* Inder Roy, 259
Crump *v.* Lambert, 277
Cuddon *v.* Morley, 62, 63
Cullen *v.* Browne, 24
Curriers Company *v.* Corbett, 85, 293, 311

D

Dale *v.* Hamilton, 185
Dalglish *v.* Jarvice, 107
Dalip Singh *v.* Durga Prasad, 159
Damodar Ruttonsey *v.* Hormasij Adarji, 331
Damodar Valley Corpn. *v.* Haripada Das, 104
Daniel *v.* Adams, 155
Daniel *v.* Camplin, 249
Daniel *v.* Ferguson, 313
Darab Kuar *v.* Gomti Kuar, 213
Darbo *v.* Kesho Rai, 45
Davenport *v.* Davenport, 228
Davies *v.* Leo, 234
Davies *v.* Makuna, 67, 71
Daw *v.* Eley, 50
Dawkins *v.* Antrobus, 192, 193
Dawson *v.* Princeps, 28, 50
Daya Nand *v.* Harpal, 232
Dayabhai *v.* Bapilal, 28
Dayalchand Laha *v.* Bhoyrubnath Khettry, 44
Dayaram *v.* Gordhandas, 40
De Bussche *v.* Alt, 70
Deity Mandir *v.* Gramsabha, 350
Delhi and London Bank Ld, *v.* Hem Lall Dutta, 282, 284, 285, 288, 301, 302
Delhi and London Bank *v.* Ram Narain, 51
Delhi and Londan Bank *v.* Ramnarain, 133
Delhi and London Bank *v.* Wordie, 12, 34, 35, 36, 37, 38
Delhi Municipality *v.* Suresh Chandra, 76
De Mattos *v.* Gibson, 68, 167
Deno Bundhu Nundy *v.* Hari Mati Dassee, 120
Denne *v.* Light, 179
Dennis *v.* Eckardt, 271
Deno Bandhu Nundy *v.* Hari Mati Dossee, 126
Denonath Sreemoney *v.* C. S. Hogg, 38

CENTRAL LIBRARY

Dent *v.* Auction Mart Co., 86, 87, 284, 288, 290, 291, 292 295, 296, 300, 310
Depau *v.* Moses, 204
Desai *v.* Keshavbhai, 231
Desai Malabhai Bapubhai *v.* Kushavbhai Kuberbhai, 39
Desai Motilal Mangalji *v.* Desai Parashottam Nandlal, 159
De Souza *v.* British South Africa Co., 34, 35
Despande *v.* Arvind Mills Co. Ltd., 169
De Tastet *v.* Bordenave, Inc., 102
Dhanpat Singh *v.* Union of India, 79
Dhannalal *v.* Chittar Singh, 273
Dhanu Lal Suchanti *v.* Seth Hukum Chand, 18
Dhanpati Bag *v.* Narain Das, 113
Dharma Das Kundu *v.* Amulyadhan Kundu, 230
Dhir Singh *v.* Kailashi, 79
Dhuman Khan *v.* Muhammed Khan, 287
Dhundiram Santukram *v.* Chandanabai, 30, 130
Dhunjibhoy Cowasji Umrigar *v.* Lisboa, 3, 42, 65, 66, 85, 86, 87, 89, 273, 288, 289, 292, 294, 298, 300, 301
Dhuronidhur Sen *v.* The Agra Bank, 33, 41, 109, 114, 116, 121, 126, 136
Dicker *v.* Popham Radford & Co., 295, 301
Dicks *v.* Brooks, 221
Dicks *v.* Yates, 318
Dilbar Sardar *v.* Hossein Ali Bepari, 255
Dilkush Desai *v.* Don Bros. Co., 75
Dimbleby & Sons Ltd. *v.* National Union of Journatists, 78
Directors of Swindon Water works Co. Ltd., *v.* Proprietors of the Wilts and Becks Canal Navigation Co, 279
Distributory Automatici Ilalia SPA *v.* Holford General Trading Co. Ltd., 136
District Judge *v.* Basori Lal, 109
Divethi Varada Ayyangar *v.* Kishnasami Ayyangar, 159
Doe d. Bampton *v.* Petumber Mullick, 38
Doe d. Chuttoo Sick Jemadar *v.* Subbessur Sein, 38
Doe d. Colvin *v.* Ramsay, 38
Doe d. Hurlall Mitter *v.* Hilder, 38
Doe d. Mudoosoodun Doss *v.* Mohender Lall Khan, 38
Doherty *v.* Allman, 162, 167, 233, 234, 246, 247
Donmar Production Ltd. *v.* Bart, 323
Doorga Churn Chatterji *v.* Ashootosh Dutt, 2, 122
Doorga Churn Dhur *v.* Kally Coomer Sen, 306
Dorab Ally Khan *v.* Moheeruddeen, 38
Dovenport *v.* Rylands, 337
Dreyfus *v.* Peruvian Guano Co., 91
Duncuft *v.* Albrecht, 172
Dunia Lal Seal *v.* Gopi Nath Khetry, 245
Dunn *v.* Bryan, 55, 60
Durell *v.* Pritchard, 81, 292
Durgadas *v.* Nalin, 227
Durga Dutt *v.* Navratna Pharmaceutical Laboratories, 339
Durga Nath Pramanik *v.* Chintamoni Dossi, 26
(Dr.) Dutt *v.* University of Delhi, 153

CENTRAL LIBRARY

Dwarkanath Bhooyea *v.* Gopeenath Bhooyea, 261
Dyers Co. *v.* King, 289
Dyke *v.* Taylor, 62
Dyneshwar *v.* Atmaram, 83

E

Eardley *v.* Granvilla, 93
East Lancashire Railway Co. *v.* Hatlersley, 62
Easter *v.* Russ, 163
Edlesten *v.* Edlesten, 334
Egmont *v.* Smith, 248
Elam *v.* Elam, 204
Eley *v.* Positive Government Security Life Assurance Co., 179
Ellard *v.* Llandaff, 177
Ellis v. Grey, 24, 25
Elmhirst *v.* Spencer, 62
Emanuel *v.* Emanuel, 136
E. M. I. Ltd. *v.* Pandit, 325
Emma Silver Mining Co. *v.* Grant, 155
Emperor of Austria *v.* Day, 22, 30, 41, 221
England *v.* Curling, 185
Entertaining Enterprises, Madras *v.* State of Tamil Nadu, 322
Erlanger *v.* New Sombrero Phosphate Co., 74
Esso Petroleum Co. Ltd. *v.* Kingswood Motors, 83
Esubai *v.* Damodar Ishvardas, 307
Evans *v.* Coventry, 29
Evans *v.* Davies, 28
Evans Marshall & Co. Ltd. *v.* Bertola S.A., 15
Ewing *v.* Orr Ewing, 33
Ewing & Co. *v.* Grant Smith & Co., 332, 329
Ex parte *Dilton*, In re. *Woods*, 115
Ex parte Island Records Ltd., 136, 325
Ex parte Jijiai Amba, 43
Ex parte Mountford, 30
Ex parte Pollard, 33
Ex parte *Reynolds*, In re. Barnett, 115
Ex parte Warren ... In re Joyce, 6
Ex parte Whitefield 30

F

F. Hopman-Laroche & Co. *v.* Secy. of State for Trade & Industry, 101, 346
Faine *v.* Brown, 178
Faison *v.* Mellwaine, 31
Faith Panton Property Ltd. *v.* Hodgetts, 67
Falke *v.* Gray, 172

CENTRAL LIBRARY

Fatchyab Khan *v.* Muhammed Yusuf, 308
Fazl Karim *v.* Maula Baksh, 32
Fehter *v.* Montgomery, 68
Fellows *v.* Fisher, 78
Fenwick *v.* East London Railway Company, 275
Field *v.* Jackson, 234
Fills *v.* Read, 202
Fisher *v.* Keane, 192
Fitch *v.* Rochfort, 107
Fleming *v.* Hector, 190
Fleming *v.* Hislop, 269, 270, 274, 278
Fletcher *v.* Bealey 10
Fletcher *v.* Rylands, 269
Flight *v.* Bolland, 150
Flower's Case, 25
Food Corporation of India *v.* Yadav Engineer & Contractor, 144
Fooks *v.* Wills, Somerset and Weymouth Railway Co., 61
Ford *v.* Compton, 31, 45
Ford *v.* Foote, 334
Foreign Bond-holder *v.* Pastor, 24
Fothergill *v.* Rowland, 151
Francome *v.* Mirror Group Newspaper Ltd., 218
Fraser *v.* Evans and another, 319
Freeman *v.* McArthur, 96, 106, 107
Frewen *v.* Lewis, 25, 205
Fromji Bhicaji *v.* Mahansing Dhansing, 201
Fritz *v.* Hobson, 91, 217
Fulkumari *v.* Ghanshyam Misra 110, 123
Fureedoonissa *v.* Ram Onogra Singh, 259

G

Gaekwad of Baroda *v.* Gandhi Kachrabhai Kasturchand, 189
Gajadhar *v.* Keshav Lall, 82, 281
Gale *v.* Abbott, 19, 20, 74
Gajanan *v.* Seth Brindaban, 5
Ganesh Singh *v.* Ram Raja, 212
Gangabai *v.* Purshotam Atmaram, 10
Ganga Nand *v.* Balgobind Das, 124
Gangavishnu Shrikisondas *v.* Moreshvar Bapuji Hegishte, 319
Gangubai *v.* Sitaram, 17
Gani Pala *v.* Kati, 79
Ganoda Sundary Choudhurani *v.* Nalini Ranjan Raha, 25, 34, 117, 147
Ganpat *v.* Anaji, 186, 258
Garagiah *v.* Manche Gowda, 54
Garden Cottage Foods Ltd. *v.* Milk Marketing Board, 218
Garside *v.* Outram, 201
Garstin *v.* Aspin, 63

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Garudeo Narayan *v.* Amrit Narayan Sinha, 112
Gaskin *v.* Ball, 311
Gee *v.* Pritchard, 202
Gerua Biswal *v.* Kshyama Biswal, 159
Ghanasham Nilkant Nadkarni *v.* Moroba Ramchandra Pai, 3, 11, 29, 42, 61, 62, 65, 81, 82, 87, 88,89, 273, 387, 288, 289, 294, 295, 297,298, 300, 301, 302 303,310, 312
Gian Singh *v.* Mohan Lal, 159
Gibbon *v.* Abdur Rahman Khan, 229
Gibbs *v.* Morgan, 50
Gillroy's Appeal, 101
G.I.P. Railway Company *v.* Nowroji Pestonji, 65, 81, 90, 102, 307
Girish Chunder Mitter *v.* Jatadhari Sadukhan, 220
Gladstone Ottoman Bank 24
Glassington *v.* Thwaites, 187
Gobind Chunder Ghose *v.* Ram Coomar Dey, 255
Godhra Borough Municipality *v.* Godhra Electricity Co. Ltd., 5
Godillot *v.* Hazard, 337
Gokal Prasad *v.* Radho, 310
Gokul Chandra *v.* Basik Begum, 211
Goldsmith *v.* Tunbridge Wells Improvement Commissioners, 63, 93, 271
Goluck Chunder Gooho *v.* Mohim Chunder Ghose, 101, 129, 130, 131
Gomaji *v.* Subbarayappa, 158
Gomes *v.* Carter, 58, 75, 129
Gompertz *v.* Goldingham, 192
Gooch *v.* Marshall, 49
Goodfellow *v.* Prince, 330
Goodhart *v.* Hyett, 60
Goodson *v.* Richardson, 77
Gooroodass Dhur *v.* Bejoy Gobind Burul, 253
Gopalnarain Mozoomder *v.* Muddomutty Gooptee, 300
Gopalnarain Mozoomder *v.* Muddomutty Gupta, 69
Gopeenath Mookerjee *v.* Kally Dass Mullick 14, 57
Gopi Nath *v.* Amir Chand, 108
Gordon *v.* Cheltenham Railway Co., 71
Gort *v.* Clark, 82
Gossain Money Puree *v.* Guru Pershad Singh, 16, 39, 40, 47, 48, 109, 123, 136
Gotham Construction Co. *v.* Amulya Krishna, 274
Govindalal *v.* Ichha Vagha, 22
Govindanan *v.* Murlidhar Sriniwas, 104
Graham & Co. *v.* Kerr, Dodds & Co., 329
Grand Junction Canal Co. *v.* Dimes, 50
Grand Junction Canal Co. *v.* Shugar, 312
Grosvenor Hotel Company *v.* Hamilton, 278
Great Eastern Railway Co. *v.* Birmingham and Oxford Junction Railway Co., 59
Great Northern Railway Co. *v.* Eastern Counties Railway Co., 189
Great Western Railway Co. *v.* Birmingham Ry. Co., 14
Green *v.* Button, 221
Greenhalgh *v.* Manchester and Birmingham Railway, 69, 70
Greenwood & Co. *v.* Holquette, 140

CENTRAL LIBRARY

Greenwood *v.* Hornsey, 87, 294, 310, 312
Gregory *v.* Brunswick, 220
Gulabhai Gopalji *v.* Jinabhai Ratanji, 39
Gulam Abbas *v.* State of Uttar Pradesh, 351
Gumani *v.* Ram Charan, 182
Gurasz *v.* Gurasz, 351
Guru Dass Dhar *v.* Bijaya Gobinda Baral, 261, 264
Gurunath Shrinivas Desai *v.* Chenbasappa, 159
Gurusami Sastria *v.* Ganapathia Pillai, 175
Gutsole *v.* Mathers, 220

H

Hadjee Ismail Hadjee Hubbeeb *v.* Hadjee Mahomed Hadjee Joosub, 37
Hadmor Productions Ltd. *v.* Hamilton, 218
Haines *v.* Taylor, 60, 61, 69
Haji Abdul Allarakhi *v.* Haji Abdul Bacha, 73, 90, 98, 151, 167
Haji Mahomed Mitha *v.* Musaji Esaji, 181
Haji Syed Mahomed *v.* Gulab Rai, 82, 229
Hall *v.* Hall, 9, 351
Hameedoollah *v.* Mahomed Ashgar, 315
Hammond *v.* Smith, 106
Hamp *v.* Robinson, 29
Hanumayya *v.* Venkatasubayya, 30
Harbuns Sahai *v.* Bhairo Pershad Singh, 11, 42
Hari *v.* Secretary of State for India, 95
Haribandhu Das *v.* Ashoka Industries (P) Ltd., 75
Haridas Ramdas *v.* Ramdas Mathuradas, 211
Harilal *v.* Prayag Ram, 108
Harikisore *v.* Barada Kisore, 239, 240
Hari Mohun Thakur *v* Kissen Sundari, 279
Hari Sankar Dutt *v.* Kali Kumar Patra, 40
Harman *v.* Jones, 57
Harman Pictures (N. V.) *v.* Osborn, 323
Harnet *v.* Yielding, 155
Harper *v.* Secretary of State for the Home Department, 349
Harrendro Coomar Chowdhury *v.* Taramoni Chowdhury, 308
Harris *v.* Amery, 149
Harrison *v.* Duke of Rutland, 308
Harrison *v.* Southwork and Vauxhall Water Company, 275
Harrison *v.* The Marquis of Abergavenny, 193
Harshamukhi *v.* Nabakrishna, 119
Hart *v.* Grooser, 117
Hart *v.* Hart, 119
Hartlepool Gas & Water Co. *v.* West Hartlepool Harbour and Railway Co., 29
Hassonbhoy *v.* Cowasji Jehanjir Jassawalla, 49
Hawkins *v.* Gardiner, 28
Hayagueva *v.* Sami, 281
Hayward *v.* East London Water-works Company, 59

CENTRAL LIBRARY

Hayward *v.* Hayward, 22
Heather *v.* Pardon, 278
Hemanta Kumar *v.* Baranagar Jute Co., 261
Hepburn *v.* London, 312
Herbage *v.* Pressdram Ltd., 220
Hervey *v.* Smith, 20
Herz *v.* Union Bank of London, 296
Hext *v.* Gill, 28, 59
H. H. Holkar *v.* Dadabhai 147
H. H. Shrimant Maharaj Yashvantrav Holkar *v.* Dadabhai Cursetji Ashburner, 33, 34, 35, 36, 49
Hill *v.* South Staffordshire Railway Co., 69
Hilliard *v.* Hanson, 110
Hilton *v.* Lord Granville, 57, 106, 235
Hindustan Radiators Co. *v.* Hindustan Radiators Ltd., [54]
Hiralal *v.* Popatlal, 53
H. M. Kamaluddin Ansari & Co. *v.* Union of India, 2, 144, 350
Hodson *v.* Coppard, 28
Holderstaffe *v.* Saunders, 29
Hogg *v.* Scott, 321
Hole *v.* Thamas, 256
Hoil *v.* Lichfield Brewery Co., 286
Holland *v.* Worley, 66, 85, 87, 273, 293, 294, 295, 296, 297, 299
Holloway *v.* Sheikh Wahed Ali, 264
Holyoake *v.* Shrewsbury and Birmingham Railway Co., 87
Hood *v.* Aston, 129
Hooper *v.* Rogers, 21
Hopkinson *v.* Marquis of Exeter, 192, 193
Hormasji Karsetji *v.* W. G. Pedder, 94, 206
Hormasji Manekji Dadachanji *v.* Keshav Purshotam, 161
H. *v.* H., 95
Hubbard *v.* Pitt, 86
Huddleston *v.* Briscoe, 160
Hugh Balfour & Co. *v.* Edward, Dūndar, Kilburn & Co., 332, 329
Hukum Chand Boido *v.* Kamalanand Singh, 117
Humphreys *v.* Roberts, 28
Hungerford Investment Trust Ltd. *v.* Haridas Mundra, 4
Hunter *v.* Neckolds, 26
Hur Lall *v.* Jeorakhan Lall, 32, 344

I

Imdad Khatun *v.* Bhagirath, 242
Imperial Gas Company *v.* Broadbent, 59, 79
Imperial Ice Manufacturing Co. Ltd. *v.* Munchershaw, 182
Indian Hume Pipe Co. *v.* Vendra Venkanna, 343
Indian Molases Co. (P) Ltd. *v.* C. I. T., West Bengal, 5
Innes *v.* Wylie, 191, 192
In re, Artistic Colour Printing Co., 114

CENTRAL LIBRARY

In re Australian Wine Importers Ltd., 328
In re Chando Bibi, 123, 124
In re. Hammersmith Rent Charge, 192
In re. Hawthorne, Graham *v.* Massey, 34
In re. London Marine Association, 190
In re. Missourie Steamship Co., 5
In re. N. P. Essappa Chettiar, 118
In re Purmanandas *v.* Jeewandas, 245
In the matter of Mr. A. B. Miller, Official Assignee, 130
In the matter of Gunput Narain Singh, 42, 151, 153, 170
In the matter of Hemint, 31
In the matter of McKorkindale 140
In the matter of the petition of S. J. Leslie, 35
Isaacson *v.* Thompson, 71
Isenberg *v.* East India House Estate Company, 81, 291, 311
Ismail Ariff *v.* Mahomed Ghous, 230
Israil *v.* Samser, 261
Iswarayya *v.* Swarnam, 4
Iveson *v.* Harris, 28, 50

J

Jackson *v.* Cator, 61
Jackson *v.* Duke of Newcastle, 86, 290, 292, 298
Jacobs v. Seward, 226
Jacomb *v.* Knight, 312
Jadoo Lall Mullick *v.* Gopaul Chunder Mookerjee, 307
Jagannath *v.* Authorised Officer, 6
Jagannath Churn *v.* Akali Dossia, 191, 192
Jaggodumba Dossee *v.* Puddomoney Dossee, 34, 35, 36, 37
Jagjivan Nanabhai *v.* Shridhar Balkrishan Nargarkar, 101, 107, 196
Jagun Nath Bysack *v.* Prosonno Coomar Chatterjee, 246
Jai Narain *v.* Municipal Committee, 82
Jairam Narayan Raje *v.* Atmaram Narayan Raje, 33, 34, 36, 37
Jamnadas, &c. *v.* Atmaram &c., 89
Jamnadas Shankarlal *v.* Atmaram Harjivan, 65, 69, 70, 72, 73, 74, 75, 81, 83, 274, 288, 290, 299, 300, 312, 313, 314
Jamsetji Manekji Kotwal *v.* Hari Dayal, 28
Jang Bahadur Singh *v.* Chabila Koiri, 53
Jankee Singh *v.* Bukhoorie Singh, 260, 263, 264
Jawala Prasad *v.* Munna Lal Serowgee, 330, 336
Jawatri *v.* H. A. Emile, 81, 84, 145, 280
Jay Chunder Rukhit *v.* Bippra Churn Rakhit, 251, 254, 261, 262, 263, 264
Jeffreys *v.* Boosey, 315
Jennings *v.* Rundall, 212
Jethalall Harachand *v.* Lalbhai Dalpatbhai, 229
Jethalal Hirachand *v.* Lalbhai Dalpatbhai, 66, 77
Joharmul *v* Ishwardas, 54
John Richard Brady *v.* Chamical Process Equipments P. Ltd., [54]

CENTRAL LIBRARY

Johnson *v.* Wyatt, 69, 291
Johnson *v.* Shrewsbury and Birmingham Railway Co., 62
Johnston v. Courts of Justice Chambers, 19
Johnstone *v.* Orr Ewing, 335
Jones *v.* Chapman, 226
Jones *v.* Chappell, 233, 246
Joseph *v.* Macowsky, 68
Joylall *v.* Gopiram Bhotica, 157
Joynarain Geeree *v.* Shibpersad Geeree, 39, 40, 133
Jugal *v.* Deoki Nandan, 243
Jugal Chunder Roy Chowdhury *v.* Eshan Chunder Banerjee, 238, 239, 240, 261, 263, 264
Jugal Kishori Chowdhurani *v.* Anunda Lall Chowdhuri, 150
Juggodumba Dossee *v.* Puddomoney Dossee, 12
Juggul Mohini Dossee *v.* Dwarka Nath Bysack, 244
Jumna Dass *v.* Harcharan Dass, 117
Jute Corporation of India *v.* Konark Jute Ltd., 2

K

Kadarbhai *v.* Rahimbhai 42, 65, 66, 81, 82, 93
Kadmbinee Dabee *v.* Nobeen Chunder Adukh, 238, 241
Kadarbhai *v.* Rahimbhai, 42, 65, 66, 81, 82, 93, 287, 290, 294, 299, 302, 313
Kalidas Jivram *v.* Gor Porjaram Hirji, 27, 59, 65, 90
Kaliprasad Das *v.* Girdhar Sahu, 118, 350
Kailliandas *v.* Tulsidas, 67
Kalu Khabir *v.* Jan Meah, 305
Kalyanbhai Dipchand *v.* Ghanasham Lal Jadunathji, 16, 105, 126
Kanahi Ram *v.* Biddya Ram, 16, 40, 47
Kanakasubai *v.* Muttu, 111, 218
Kanakayya *v.* Narasimhula, 263
Kandaswami *v.* Subramania, 19, 20, 80
Kandhiya Lal *v.* Chander, 139
Kanhaiyalal *v.* Chironji Lal, 13
Kanti Chunder Pal Chowdhury *v.* Kissory Mohun Roy, 35
Kapildeo *v.* Raghunath, 51
Karam Singh *v.* Vir Singh, 227
Karamchand Gangaprasad *v.* Union of India, 349
Karnadhar Haldar *v.* Hari Prasad Roy Chaudhuri, 126
Karunanidhi *v.* Ranga nathan, 273
Kashibai *v.* Vallabhai, 68
Kashmir Kaur *v.* Manohar Singh, 79
K. C Kayal *v.* A. C. Haldar, 46
Kehewich *v.* Marker, 247
Kellie *v.* Fraser, 33, 35, 38
Kelsey *v.* Dodd, 71, 88, 146
Kennaway *v.* Thimpson, 42, 272
Kernot *v.* Potter, 61

CENTRAL LIBRARY

Kerr *v.* Mayor, etc. of Preston, 30
Kerrison *v.* Sparrow, 63
Keshav *v.* Vinayak, 147
Kesho Prasad Singh *v.* Shrinibash Prasad Singh, 228, 266, 273
Khalilur Rahman *v.* Syed Hussain, 54
Khannan *v.* Krishnan, 182
Khimji *v.* Pursottamdas, 153
Khesilal *v.* Gorelal, 108
Khivraj Chandra *v.* Esso Standard, 154
Khushalchand *v.* Bai Mari, 351
Kinahan *v.* Bolton, 334
King *v.* Smith, 247
Kinmond *v.* Jackson, 337
Kino *v.* Rudkin, 302
Kirk *v.* Todd, 28
Kirloskar Pneumatic Company Ltd. *v.* National Thermal Power Corporation Ltd., [53]
Kirpa Dayal *v.* Rani Kishori, 16, 40, 41, 47, 99, 121, 123, 124
Kirtynand *v.* Ramanand, 167
Kishan Industries *v.* Punjab Food Corporation, 340
Kishanlal *v.* Ramrao, 103
K. M. Vishwanatha Pillai *v.* K. M. Shanmugam Pillai, 80
Kochappa *v.* Sachi Devi, 49
Koomud Chunder Dass *v.* Chander Kant Mookerjee, 156
K. P. M. Sundaram *v.* Rattan Prakashan Mandir, 323
Krehl *v.* Burrell, 85, 87, 310, 312
Krishna *v.* Anjaneyulu, 152
Krishna Ayyan *v.* Vencatachella Mudali, 61, 79, 305
Krishna Chandra *v.* Hem Chandra, 10, 57, 73, 76, 83
Krishna Mohun Bysack *v.* Kunjo Behari Bysack, 212
Krishnaji *v.* Vithalrav, 116, 126
Krishnaswamy *v.* South India Films Chamber of Commerce, 14
Kumar Sankar Roy *v.* Cotton, 24, 193
Kumara Asima Krishna Deb *v.* Kumara Kumara Krishna Deb, 139
Kunhayen Haji *v.* Mayan, 235, 243
Kunhamed *v.* Kutti, 114, 118, 119
Kunhammad *v.* Narayanan Mussad, 70, 238, 239, 240, 242, 243
Kunj Behari *v.* Keshav Lall, 101, 102, 123
Kunja Behari Chakraborty *v.* Krishnadhan Majumdar, 46
Kuttayam *v.* Mammanna, 256
Kuverji Tulsidas *v.* The Great Indian Peninsula Railway Co., 139

L

Labouchere *v.* Lord Wharncliffe, 192
Lachmi Narain *v.* Ram Charan, 108
Lacgersteen *v.* Taruknath Poramanick, 232, 287, 288, 289, 302
Lachmeswar Singh *v.* Manowar Hossein, 251, 252, 258, 265

CENTRAL LIBRARY

Laird *v.* Birkenhead Railway Co., 69
Lakmi Chand *v.* Ballam Das, 112
Lakshmamma *v.* Kameswara, 158
Lakshmana *v.* Ramachandra, 237, 238, 240, 242, 243
Lakshmi Narain Banerjee *v.* Tara Prosanna Banerjee, 80, 271, 277
Lala Biswambhar Lal *v.* Rajaram, 251, 254, 262
Lalbhai Tricamlal *v.* Municipality Commissioner of Bombay, 205
Lalji Shamji *v.* Walji Wardhman, 194
(Sm) Lalmoney Dassi *v.* Juddoonauth Shaw, 34
Lal Sahoo *v.* Deo Narain Singh, 236, 237, 238, 239, 240
Lambert *v.* Addison, 193
Lambton *v.* Mellish, 270, 278
Land Mortgage Bank of India v. Ahmedbhoy Habibbhoy, 3, 42, 64, 65, 69, 71, 74, 75, 84, 86, 87, 88, 89, 90, 92, 93, 95, 102, 105, 147, 217, 269, 270, 271, 274, 277, 278
Land Mortgage Bank *v.* Sudurudeen Ahmed, 35, 38
Lane *v.* Newdigate, 19
Lariviere *v.* Morgan, 24
Lasadin *v.* Gulab Kunwar, 4, 5
Lasarus *v.* Artistic Photographic Company, 301, 289
Lavergne *v.* Hooper 329, 331, 332, 336, 328
Lavies *v.* Marshall, 312
Lawford *v.* Spicer, 50
Laws *v.* Florinplace Ltd., 213
Laws and Ors. *v.* Florinplace Ltd., 274
Lazarus Estates Ltd. *v.* Beasley, 46
Lazenby *v.* White, 48
Leach *v.* Schweder, 299, 302
Leader *v.* Moody, 146
Leake *v.* Beckett, 26, 248
Leather Cloth Co. *v.* American Leather Cloth Co., 333
Leather Cloth Co. *v.* Lorsont, 163
Lebouchere *v.* Lord Wharncliffe, 192
Ledgard *v.* Bull, 337
Lee *v.* Haley, 336
Lewis *v.* Smith, 201
Lindsay Petroleum Company *v.* Hurd, 74
Lingwood *v.* Stowmarket Company, 63
Little *v.* Kingswood Collieries Co., 201
Littlewood *v.* Caldwell, 41, 67, 187
Lister & Co. *v.* Stubbs, 133
L. J. Crowdy *v.* Inder Roy, 254
Lloyd *v.* Mussamut Bibee Sogra, 251, 253, 260
Lloyd's Bank *v.* Medway Navigation Co., 16
Loder *v.* Arnold, 50
London & Birmingham Ry. Co. *v.* Grand Junction Canal Co , 50, 101
Loog *v.* Bean, 22
Lootf Ali *v.* Shib Dyal Singh, 236
Lord Courtown *v.* Ward
Lorenz *v.* Waldron, 60

CENTRAL LIBRARY

Lowe *v.* Lucey, 234
Lowdes *v.* Bettle, 79, 227
Lucas-Box *v.* Associated Newspaper Group, 223
Luis *v.* Luis, 48, 97, 108, 109, 136
Lumley *v.* Wagner, 8, 63, 162, 165, 166, 167, 169
Lund *v.* Blanshard, 50
Lurting *v.* Conn, 234
Lutcheemund Sett *v.* S. M. Komulmoney Dossee, 41, 204
Luxumon Nana Patil *v.* Moroba Ramkrishna, 110
Lyons *v.* Gulliver, 308
Lysaght *v.* Edward, 248
Lyttleton *v.* Blackburn, 191, 193

M

Macaulay *v.* Shakelt, 30
Macdonald *v.* Lalla Shib Dayal Singh Pandey, 252, 253, 260
Mackenzie *v.* Striramiah, 163
Maclaren *v.* Stainton, 107
Macmillan *v.* Suresh Chunder, 316, 321
Madanmahan Sen *v.* Chandra Kumar Mookerjee, 307
Madho Lal *v.* Sheo Prasad Misr, 237, 238, 239, 240, 241
Madho Prasad *v.* Draupadi, 16
Madho Singh *v.* Abdul Quiyum Khan, 146
Madhub Chunder Paramanick *v.* Raj Coomar Doss, 139, 163
Madhub Das Bairagi *v.* Jogesh Chunder Sarkar, 305
Madras Deposit and Benefit Society Ltd. *v.* Oonnammalai Ammal, 158
Madras Railway Company *v.* Rust, 42, 59, 66, 99, 151, 162, 167, 168, 169, 175
Maganlal *v.* Chhotalal 83, 307
Mahalatchmi Ammal *v.* Palani Chetti, 244
Mahamad Yamain *v.* Razi Begum, 164
Mahamed Meera Sahib *v.* Duraisami Naidu, 345
Maharaj Bahadur Singh *v.* Paresh Nath Singh, 306
Maharana Shri Ranmal Singji *v.* Vadilal Vakhatchand, 4
Maheswari & Co. P. Ltd. *v.* Corpn. of Calcutta, 144
Mahip Singh *v.* Chotu, 120, 122
Maine Moilar *v.* Islam Amanath, 32
Maine *v.* Islam Amanath, 31
Malla Suranna *v.* Kalla Suranna, 80
Mancherji Furdoonji Mehta *v.* Noor Mahomedbhoy Jarrybhoy Pirbhoy, 90, 98
Manchester Corporation *v.* Cannoly and others 229
Mangalore Ganesh Beedi Works *v.* Free India Beedi Works, 329
Manchester Corporation *v.* Cannoly and others, 229
Mann *v.* Stephens, 50
Manohar Lal *v.* Seth Hiralal, 17, 24, 46, 120
Mareva Compania Naviera SA *v.* International Bulk Carriers SA, 133
Morgan *v.* McAdam, 67
Morgan *v.* Seudamore, 45
Marker *v.* Marker, 69, 70

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Marsden *v.* Long, 3
Martin *v.* Headon, 291, 292, 300
Martin *v.* Lawrance, 49
Martin *v.* Price, 273, 294, 296, 298, 299
Mason *v.* Provident Clothing, 163
Massim Mollah *v.* Panjoo Ghoramee, 261, 262, 263, 264
Mathu Singh *v.* Sanwalla, 146
Maxim Nordenfelt Guns and Ammunition Company *v.* Nordenfelt, 163
Maya Ram *v.* Prag Dat, 151
Maynard *v.* Fraser, 97
Mayarani *v.* Bhupal, 108
Mayor of Liverpool *v.* Chorley Water-works Co., 45, 105
Mayor of Manchester *v.* Williams, 211
M' Beath *v.* Ravenscroft, 29
M'Curdy *v.* Noak, 102
Mehraj Singh *v.* Lala Mal, 124
Mellin *v.* White, 214, 224
Mercantile Investment Co. *v.* River Plate Co., 33
Merryweather *v.* Moore, 202
Metal Corp. *v.* Subbaiyer, 125
Metropolitan *v.* Petch, 302
Meux *v.* Bell, 197
M. G. Gupta *v.* Agra University, 53
Midche *v.* Chennamma, 108
Miles *v.* Thomas, 187
Miller *v.* Jackson, 42, 272
Millican *v.* Sullivan, 22
Millington *v.* Fox, 329, 333
Mills *v.* Buenos Ayres Co., 189
Mir Barkat *v.* Zulfiquar, 14, 57
Mital Corpn. *v.* A. S. Subbaiyer, 24
M. Janikamma *v.* H. Vajjula Pradeshi, 46
M. Kallappa Satty *v.* M. V. L. Rao, 232
Modhoosoodun Dey *v.* Bissonath Dey, 282 283, 284, 288
Modhu Sudan Kundu *v.* Promoda Nath Roy, 309
Modern Food Industries Ltd. *v.* S. K. Bottlers P. Ltd., 164
Mogg *v.* Mogg, 266
Mogul Steamship Co. *v.* Macgregor, 30
Mohant Ramkeshwor Das *v.* Baldeo Singh, 114
Mohd. Yunus *v.* Syedunnissa, 111
Mohedin *v.* Shivlingappa 344
Mohun Lal *v.* Bilaso, 45
Mohima Chunder Ghose *v.* Madhub Chandra Nag, 251, 254, 255, 260, 261, 262, 265
Mohini Mohan *v.* Surendra Narayan, 107, 214
Mohip Singh *v.* Chotu, 41
Mohommed Zohuruddeen *v.* Mahommed Noorooddeen, 8
Mokund Lall *v.* Chotay Lall, 176
Monindro Chunder Sircar *v.* Moneeruddeen Biswas, 236, 240, 241
Monmohinee Dossee *v.* Bishen Moyee Dossee, 159

CENTRAL LIBRARY

Monoharlal *v.* Seth Hiralal, 2, 125
Monsanto Company *v.* Coramondal Indag Products (P) Ltd, 341
Monson *v.* Tussauds, Limited, 220, 222, 223
Montague *v.* Dudonan, 29
Montague *v.* Flockton, 166
Montgomery *v.* Walker, 234
Moolji Jaitha & Co. *v.* K. S. W. Mills Co., 12, 36, 147
Mooney *v.* Cooledge, 227
Moore *v.* Hall, 301
Moran *v.* River Steam Navigation Company, 41, 57, 58, 59, 65, 99, 102, 114, 116, 118
Morgan *v.* Kibry, 279
Morgan *v.* Lariviere, 24
Morgan *v.* McAdam, 41
Morris *v.* Barret, 104
Mortimer *v.* Cottrell, 266
Mortlock *v.* Buller, 155
Mothoora Kant Shaw *v.* The India General Steam Narigation Co., 139, 140
Mott *v.* Schoolbred, 308
Mouson *v.* Boehm, 331
Mozley *v.* Alston, 27
M. Ramnarain P. Ltd. *v.* State Trading Corpn. of India Ltd., 108
Muhamad *v.* Narain, 198
Muhammad Ali Jan *v.* Faiz Baksh, 323, 249
Mugnee Ram Chowdhury *v.* Baboo Gunesh Dutt Singh, 247
Mukrumunnissa *v.* Abdool Subbar, 130
Muktakesi Dawn *v.* Haripada Mazumdar, [54]
Mulchand *v.* Gill & Co., 121
Mulkh Raj *v.* State of Punjab, 53
Mulkins *v.* Howell, 50
Mulraj *v.* Murti & Raghunathji, 25
Muncherji Furdoonji Mehta *v.* Noor Mahomedbhoy Jairajbhoy Pirbhoy, 195, 196
Mungle Chand *v.* Gopal Ram, 4
Mun Mohinee Dossee *v.* Ichamoyee Dossee, 40, 43, 129, 130, 131
Municipal Board *v.* Mir Singh, 113
Municipal Commissioners of Madras *v.* Branson, 81, 95
Murry *v.* Hall, 249
Mussamut Kaboolan *v.* Shamsher Ali, 159
Mussamut Rohimunnissa *v.* Nawab Leakut Ali Khan, 117
Muthu Krishna *v.* Somaliga, 81, 288, 292, 298, 300, 301

N

Nabin Chandra Mitter *v.* Mahes Chandra Mitter, 262
Nadirjumma Chowdhury *v.* Ram Chunder Surma, 230
Nafur Chandra Pal Chowdhuri *v.* Ram Lal Pal, 242
Nagappa *v.* Devu, 158, 160, 161
Nagarwalli Devi *v.* Girjapati Tewari, 351
Nagendra *v.* Probal, 59
Naginlal Chunilal *v.* The Official Assignee, Bombay, 25

CENTRAL LIBRARY

Naiju Khan *v.* Imtiaz-uddin, 263
Naiemia Maritime Corp. *v.* Tarve etc., 135
Nandalal *v.* Provudayal, 146
Nandkishor Balgovan *v.* Bhagubhai Pranvalabhdas, 299, 300, 312, 283
Nandkishor Balgovan *v.* Bhagubhai Pranbalabhadas, 65, 70 73, 74, 81, 82, 84, 87, 88, 89
Nanibala Saha *v.* Charubala Saha, 57
Narahari Sastry *v.* Shree Badrinath Temple Committee, 350
Narain Das *v.* Attma Ram, 82
Narain Patro *v.* Aukhoy Narain Manna, 181
Narasimma *v.* Lakshmana, 237
Narayana *v.* Pappi, 112
Narayanrao *v.* Vaman, 13
Narayanrao *v.* Waman, 46
Naronath *v.* Prem Kumari, 46
Nasarbhai *v.* Munshi, 89
Nasarbhai Ahmedbhai *v.* Munshi Badrudin, 71
Nasarvanji *v.* Sahajadi, 9
Nathan *v.* Kamala Kuar, 238, 242
Nathan *v.* Mc Laboratories, 91
National Bank India *v.* National Bank Indore, 331
National Provincial Plate Insurance Company *v.* Prudential Insurance Company, 87, 295
National Research Development Corpn, of India *v.* Delhi Cloth & General Mills Co. Ltd. & Ors, 341
National Sewing Thread Co. *v.* James Chadwick & Bros., 329
National Telephone Company *v.* Baker, 294, 275
Nav Sahitya Prakash *v.* Anand Kumar., 322
Navivahoo *v.* Narotamdas Candas, 49
Navroji Manekji Wadia *v.* Dastur Kharsidji Mancherji, 27, 84, 229
Nawn Estate P. Ltd. *v.* C.I.T., West Bengal, 5
Neale *v.* Denman, 191
Nemava *v.* Devandrappa, 39, 231
Nevanas *v.* Walker, 163
New Beerbhoom Coal Co. *v.* Bularam Mahata, 154
New London *v.* Brainard, 206
New Manufacturing Co. *v.* Superior Drill Co., 68
New Sambero Phosphate Co. *v.* Erlanger, 155
Nicholl *v.* Tarinee Churn Bose, 237 238, 239, 242, 247
Nihal Chand *v.* Azat Ali Khan, 308, 309
Nilmadhab Mundul *v.* W. F. Gillander, 50, 51
Nippon Yusen Kaisha *v.* Karageorgis, 133
Nobin Chunder Banerjee *v.* Romesh Chunder Ghose, 140
Nocurry Lall Chuckerbutty *v.* Bindaban Chunder Chuckerbutty, 258, 262, 263, 264
Nagar Mahapalika *v.* Ved Prakesh, 108
North London Railway Co. *v.* Great Northern Railway Co., 22, 134
Norway *v.* Rowe, 235
Noyna Misser *v.* Rupikun, 55, 67, 68, 76, 235, 236, 237, 238, 239, 240, 241, 243, 246

CENTRAL LIBRARY

Nuffer Chunder Ghose *v.* Nundo Lal Gossami, 242
Nurdun Lall *v.* Lloyd, 232, 252, 253, 260
Nur Ali Dubash *v.* Abdul Ali, 163
Nusserwanji Merwanji Panday *v.* Gordon, 3, 42, 88, 152, 153, 164, 167, 179
Nutbrown *v.* Thornton, 202
Nyamutoollah Ostagur *v.* Gobind Churn Dutt, 239
Nyankka Routhen *v.* Vavana Mahamed Naina Routhen, 160

O

Oakes *v.* Jackson, 163
Oakes *v.* Turquand, 150
Obhoy Churn Dey *v.* Lukhy Monee Bewa, 279
Ollendorf *v.* Black, 58
O. N. G. C. *v.* Western Co. of America, 120
Onkar Singh *v.* Bhup Singh, 125
Onkarapa *v.* Subaji Pandurang, 70
Onraet *v.* Kishen Soondaree Dassee, 279
Oppenheim *v.* Mackenzie, 222
Orient Government Security Co. *v.* Oriental Assurance Co., 331
Orr Ewing & Co. *v.* Johnston & Co. 334

P

Padamani Dosi *v.* Jagadamba Dasi, 34
Paget *v.* Ede, 33, 34
Palit Exhibitors P. Ltd. *v.* Corporation of the City of Bangalore, 198
Paras Ram *v.* Sherjit, 261, 262, 263, 264
Parbutty Bewah *v.* Woomatara Dabee, 245
Paredes *v.* Lizardi, 106
Parikh Jivanlal *v.* Shah Chitalal, 53
Paris Chocolate Co. *v.* Crystal Palace Co., 154
Parker *v.* Calcraft, 197
Parker *v.* Canden LBC, 21
Parker *v.* First Avenue Hotel Company, 302
Parkin Hill *v.* Schwarz, 151
Parle Product (P) Ltd *v.* J. P. & Co., Mysore, 338
Parrot *v.* Palmer, 235, 267
Parvati Devi *v.* Harbindra Singh, 79
Parveen Chander *v.* Raj Kumar, 75
Pattison *v.* Gilford, 60, 215
Paul *v.* Robson, 287
Peacock *v.* Peacock, 187
Peacock *v.* Penson, 178
Peddamathulaty *v.* Timma Reddy, 71, 72
Peebles *v.* Oswaldtwistle Urban District Council, 212
Pendarves *v.* Munro, 289
Penguine Book Ltd. *v.* India Book Distributors, 323
Penn *v.* Lord Baltimore, 32, 33, 34, 49

CENTRAL LIBRARY

People *v.* Albany & V. R. Co., 51
People *v.* S. Louis, 271
Perry *v.* Truefitt, 41, 67, 333, 336
Perumal *v.* Ramasami, 304, 305
Petley *v.* Eastern Counties Railway Co., 248
Petley *v.* Parsons, 307
Petman *v.* Bull, 337
Peto *v.* Brighton Uckfield and Tunbridge Railway Co., 68, 166, 169
Phillimore *v.* Watford Rural Canal, 100
Phillips *v.* Homfray, 211
Phillip *v.* Subba Iyer, 82
Phillips *v.* Sylvester, 248
Pidding *v.* How, 336
Piggott *v.* Middlesex County Council, 75
Pike *v.* Nicholas, 319
Pillsworth *v.* Hopton, 234
Pillalamarri Lakshmikantham *v.* Ramakrishna Pictures, 322
Pinchin *v.* London and Blackwell Railway Co., 62
Ponduranga *v.* Nagappa, 27
Ponnusami Tevar *v.* The Collector of Madura, 305, 306
Ponnusawmi Tevar *v.* The Collector of Madura, 65, 88, 102
Poran Chand Galeicha *v.* Pareshnath Singh, 229
Poreshnath Mookerjee *v.* Omerto Nath Mitter, 40
Pothi *v.* Naganna, 158
Potts *v.* Levy, 61
Poulett *v.* Chatto, 220
Pragji Kalan *v.* Govind Gopal, 193
Pranjivandas Harjivandas *v.* Mayaram Samaldas, 280, 286, 287, 300, 302, 303
Prankristo Roy *v.* Huro Chunder Roy, 305
Prosonna Coomar Singha *v.* Rana Coomar Ghose, 307
Preeti Singh Roy *v.* Calcutta Tramways Co. (1978) Ltd., 26
Premji Jivan Bhate *v.* Haji Casseem Juma Ahmed, 72
Prem Sook *v.* Dhurum Chand, 164
Prichard *v.* Wilson, 195
Prince Albert *v.* Strange, 202
Proctor *v.* Bennis, 70
Prosunno Coomer Chatterjee *v.* Jagun Nath Bysack, 235, 239, 238
Prosunno Moyee Dossee *v.* Wooma Moyee Dossee, 102, 130
Provabutty Dabee *v.* Mohendro Lall Bose, 289
Prudential Assurance Co. *v.* Knott, 22, 222
Public Trustees, Shepherd *v.* Trustees of Port of Bombay, 95
Puddephatt *v.* Leith, 82
Punchanan Singh *v.* Kumuklota Barmoni, 117
Purmandas Jewandas *v.* Dharsey Virji, 161
Purshotam Sakharam *v.* Durgoj Tukaram, 282
Purshottam Vithal *v.* Purshottam Iswar, 123
Pushpaben *v.* Narandas, 52

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

Q

Quartz Hill & C, Mining Co *v.* Ball, 22, 220
Queen Empress *v.* Chagan Dayaram, 11, 42

R

R *v.* Brown Durant, 251
Radhanath Sugracharji *v.* Baidonath Seal Kabiraj, 306
Radhey Shiam *v.* Gur Prasad Sarma, 272
Raghubar Dial *v.* Madan Mohan Lal, 156
Raghubir *v.* Shankar, 125
Raghunandun Pershad *v.* Bhugo Lal, 112
Raghunath Damodhar *v.* Janardhan Gopal, 192, 193
Raja Bahadur K. N. Singh *v.* Union of India, 79
Raja Valad Shivapa *v.* Krishnabhat, 32, 344
Rajarathram *v.* Shivalayammal, 188
Rajendra Lall Goswami *v.* Shama Churn Lahori, 261. 262, 264
Rajit D. Udeshi *v.* State of Maharastra, 5
Raj Krishna Dey *v.* Bepin Behari Dey, 110
Rajmohun Bose *v.* East India Railway Co., 12, 33, 36, 147
Ralli *v.* Fleming, 329, 333, 334, 336
Ram Chand *v.* Pitam Mal, 16, 39
Ram Chand Dutta *v.* Watson & Co, 3, 41, 65, 120, 254, 257, 258, 259, 260
Ramanadhan *v.* Zemindar of Ramnad, 65, 66, 81, 89
Ramanandi *v.* Kalawati, 4
Ramchandra Dada Naik *v.* Dada Mahadev Naik, 34
Ram Chander Haldar *v.* Govind Chunder Sen, 159
Ranichandra *v.* Janardhan, 136
Ram Charan Bajpai *v.* Rakhal Das Mukherji, 151, 199
Ramdas Khaitan & Co. *v.* Atlas Mills Co. Ltd., 157
Ramdhone Shaw *v.* Sreemutty Nobumoney Dossee, 147
Ram Kisen *v.* Poorman, 76
Ram Narain Shaha *v.* Kamala Kanta Shaha, 306
Ram Piari *v.* Municipal Committee, 153
Ram Sumer Puri Mahant *v.* State of U. P., 349
Ramacharya *v.* Ananta Charya, 205
Ramchandra Vasudevshet *v.* Babaji Kusaji, 233, 245
Ramanadhan *v.* Zemindar of Ramnad, 236, 239, 241, 246
Ramdhone Shaw *v.* S. M. Nobumoney Dossee, 33, 35
Rameshar Pershad Narain Singh *v.* Koonj Behari Pattuk, 279
Ramjas *v.* Brajmohan, 22
Ramjas Agharwalla *v.* Brajo Mohan, 60
Ram Kisen *v.* Poorman, 22
Ramlochun Sirkar *v.* S. M. Kaminee Debee, 36
Ramon Hosiery Factory, Delhi *v.* J. K. Syntheties Ltd., 79
Ramphal Shahoo *v.* Misree Lal, 72
Ram Pratap *v.* Daya Nand, 53
Ram Rau *v.* Raja Ram, 72
Ram Sadan Biswas *v.* Mothura Mahon Hazra, 122

CENTRAL LIBRARY

Ram Sarup Singh *v.* Mahabir Mahton, 11
Ramsarup *v.* Emperor, 30
Ramsden *v.* Dyson, 70
R. Andemana *v.* P. Narasimhan, 111
Ranchhod Jamnadas *v.* Lailu Haribhai, 65, 71, 81, 82, 88, 89, 90, 145, 146, 151, 301, 314
Ranchod *v.* Abdula Bhai, 278
Ranchordass Amthabhai *v.* Maniklal Gordhadass, 103, 306, 307
Ranga Pai *v.* Babu, 111, 200, 203
Ranjas Agharwallah *v.* Brajo Mohan, 245
Rankfilm Distributors Ltd. *v.* Video Information Centre, 136
Rapier *v.* London Tramways Company, 273, 275, 278
Ransome *v.* Graham, 330
Rash Behary Dey *v.* Bhowani Churn Bose, 4, 39, 117
Rasul Karim *v.* Perubhai Amirbhai, 20, 80, 81
Ratan Chandra *v.* Adhar, 96
Ratanji Harmasji Bottlewalla *v.* Edaji Harmasji Bottlewalla, 81, 99, 282, 285, 286, 288, 289, 290, 292, 299, 300, 301, 302, 310, 312, 313
Ratehyab Khan *v.* Muhammad Yusuf, 309
Rati Ram *v.* Ram Bhoj Gupta, [53]
Rayner *v.* Stone, 153
Re. A. Company, 119
Read *v.* Lyons, 269
Reddaway *v.* Banham, 330, 331
Redland Brieks Ltd. *v.* Morris, 20, 214
Reinhardt *v.* Mentasti, 269, 270, 278
Reserve Bank of India Employee's Association *v.* R. B. I., 110
Rex *v.* C. I. T., Kensington, 96
Rex *v.* Income Tax Commissioner, 107
R. G. Anand *v.* Delux Films, 321
R. H. M. Foods Ltd. *v.* Bovril Ltd., 15
Richards *v.* Richards, 351
Richardson Gardner *v.* Freemantle, 193
Richmond Waterworks Co. *v.* Vestry of Richmond, 189
Riding *v.* Smith, 221
Rigby *v.* Connel, 191
Rigby *v.* Great Western Railway Company, 62
Riley *v.* Halifax Corporation, 62
Ripon *v.* Hobart, 59, 61, 62
R. M. Subbiah *v.* N. Sankaran Nair, 57, 324
Roberts *v.* Bozon, 26
Robinson *v.* Ayya Krishnama Charyar, 279
Robinson *v.* Byron, 20
Robinson *v.* Kilvert, 278
Robinson *v.* Pickering, 132
Robson *v.* Edwards, 282
Rochdale Canel Co. *v.* King, 74
Rochefoucauld *v.* Boustead, 74
Rohini Singh *v.* J. Hodding, 258
Rorkell *v.* Whitworth, 47

CENTRAL LIBRARY

Roussac *v.* Thacker, 319
Roy Luchmiput Singh Bahadur *v.* The Secretary of State for India, 2, 39, 102, 122
R Prakash *v.* Chowdhary Plastic Works, 343
R. S. Muthuswami Gounder *v.* A. Annamalai, 79
R. S. Tewari *v.* District Board, 153
Ruplal Khettry *v.* Mahima Chandra Roy, 75, 122
Russell *v.* Russell, 192
Russell *v.* Watts, 70
Russick Lall Muddack *v.* Lokenath Kurmokar, 245
Ryan *v.* Mutual Tontine Westminister Chambers Association, 151, 155, 173m

S

S. C. F. Finance Co. Ltd. *v.* Masri, 15
Sabhapati Singh *v.* Abdul Gaffur, 24
Sachindra *v.* Binapani, 228
Sachindralal Mitter *v.* Panchanan Mitter, 226
Sachindra Nath Banerjee *v.* Sitaram Agarwalla, 5
Sadagopa *v.* Krishnamachari, 111, 136
Sadgopa Chariar *v.* Rama Rao, 309, 345
Sadagopa Ramanjiah *v.* Mackenzie, 163, 164
Sadarmull *v.* Agarchand, 157
Sadasiva *v.* Subramaniam, 82
Sajedur Raja *v.* Baidyanath De, 27
Sakarlal *v.* Bai Parbatibhai, 303
Sakti Ranjan Chatterjee *v.* Hindusthan Steel Ltd., 109
Sales Tax Officer *v.* Kanhailal, 4
Salig Ram *v.* Jhunna Kuar, 156
Sambhubhai Karsandas *v.* Shivlaldas Sadashivdas Desai, 160
Samson *v.* Samson, 351
Sanders Lead Co. *v.* Entores Metal Brokers Ltd., 135
Sankaralingam Chettier *v.* Stephen Ralli, 82, 264
Saraju *v.* Ganga, 108
Sardar Singji *v.* Ganpat Singji, 40
Sarsuti *v.* Behari Lal, 45
Sarubhai *v.* Bapu Narhar Sohoni, 277
Satku Valad Kadir Sausare *v.* Ibrahim Aga Valad Mirza Aga, 308, 309
Satoor *v.* Satoor, 10
Satyanarayana *v.* Yelloji Rao, 72
Satyanarayan Tiwari *v.* Shops Santhoshnagar, 111
Saull *v.* Browne, 30
Saunders *v.* Smith, 57
Saxlehner *v.* Appolinaris Co., 330
Sayad Muhammad *v.* Fatteh Muhammad, 103
Sayers *v.* Collyer, 71, 88
Scott *v.* Firth, 278
Scott *v.* Rayment, 189
Seaton *v.* Gould, 192, 193
Secretary of State for India *v.* Ambalarana Pandara Sannadhi, 61
Secretary of State for India *v.* Gajanan Krishnarao Mavtankar (1911), 25

CENTRAL LIBRARY

Secretary of State for India *v.* Rajlucki Debi, 25
See Moran *v.* River Steam Navigation Co., 119, 121
Seenappa *v.* Suryanarayana, 53
Seixo *v.* Provezende, 329, 333
Semper *v.* Foley, 274
Sengaravelu Mudale *v.* Balasubrahmania Mudale, 117
Senior *v.* Pawson, 311, 313
Seshamma *v.* Subbarayadu, 71
Service *v.* Castaneda, 106
Sethurayar *v.* Shanmugam Pillai, 121, 122, 197
Sevin *v.* Deslandes, 166, 167
Shadi *v.* Anup Singh, 3, 11, 42, 43, 65, 81, 254, 261, 262, 263, 264
Shaffo *v.* Bolckow & Co., 28, 59
Shaikh Moheeoodden *v.* Shaikh Ahmed Hossein, 16, 39, 40, 47
Shakuntala *v.* Hira Nand Sharma, 198
Shamnugger Jute Factory *v.* Ram Narain Chatterjee, 3, 4, 76, 83, 251, 254, 257, 262, 264, 311
Shareef *v.* Judges of Nagpur High Court, 53
Shariff Ahmed *v.* Emperor, 226
Sharoop Dass Mandul *v.* Joggessur Roy Chowdhury, 242
Shashank *v.* Naraindas, 52
Sheen *v.* Johnson, 337
Shaikh Ally Hossein *v.* Seikh Muzhur Hossein, 72
Shaik Hussain *v.* Govardhandas Parmanandas, 70
Sheik Ibrahim *v.* Parvata, 159, 160
Shaikh Mahomed Ohid *v.* Kalee Pershad Singh, 159
Sheikh Rahmatulla *v.* Sheikh Sariutulla Kagchi, 159
Shelfer *v.* City of London Electric Lighting Co. 276, 299, 313
Sheoambar *v.* Deodat, 156
Sheopershad Singh *v.* Leela Singh, 251, 252, 253, 254, 261
Shepherd *v.* The Trustees of the Port of Bombay, 14, 22, 81, 188, 190, 206, 218
Shephard *v.* Bateman, 221
Sher Singh *v.* Jt. Director of Consolidation, 110
Shirley *v.* Stratton, 177
Shivlal *v.* Tirmbak, 110
Shivaraya *v.* Sharnappa, 108
Shree Ambarnoth Mills *v.* Custodian, 154
Shrewsbury and Chester Railway Company *v.* Shrewsbury and Birmingham Railway Company, 58
Shridhar Balla Kelkar *v.* Chintaman Sadashiv Mehendate, 161
Shunmugam *v.* Moidin, 188
Siddeswara *v.* Krishna, 309
Sidheswari Dabi *v.* Abhoyeswari Dabi, 43
Siliguri Municipality *v.* Amalendu Das, 348
Simpson *v.* Denison, 189
Sing *v.* Kamaleswara Prosad, 125
Singer Manufacturing Co. *v.* Loog, 331
Singer Manufacturing Co. *v.* Wilson, 329
Sitaram *v.* Lachminarain, 53
Sitaram *v.* M. G. Deo, 110

CENTRAL LIBRARY

Smith *v.* Day, 312
Smith *v.* Froment, 186
Smith *v.* Harrison, 177
Smith *v.* Inner London Education Authority, 26, 346
Smith *v.* Lloyd, 226
Smith *v.* Peters, 171
Smith *v.* Smith, 71, 80, 82, 85, 87, 295, 310
Smith *v.* Weguelin, 24
Societe, &c., de Glaces *v.* Tilghman's &c., Co., 220
Soltau *v.* De Held, 268
Somerset *v.* Cookson, 202
Somnath *v.* Raju, 230
Somu Gurukhal *v.* Rangammal, 157, 159
Soobul Chunder Law *v.* Russick Lall Mitter, 204
Soorjoo Coomar Bhuttacharjee *v.* Vugwan Chunder Roy, 159
South Hetton Coal Co. Ltd *v.* North Eastern News Association Ltd., 220
Sparling *v.* Clarson, 82
Sparrow *v.* Oxford, Worcester, and Walverhampton Railway Company, 58
Sree Krishnasami Dasi *v.* Ananda Krishna Bose, 139
Sreemutty Sohocharry Dossee *v.* Huree Kisto Roy, 96, 106, 107
Sreenarain Chuckerbutty *v.* A. B. Miller, 122
Sreenath Roy v. Cally Doss Ghosh, 33, 35, 147
Sri Chand *v.* Nim Chand Sahu, 264
Sridhar *v.* Gujabai, 277
Srinivasa *v.* Tiruvengada, 32, 344
Srinivasaraghavan *v.* Sundararajan, 53
Sri Sinha Ramanuja Jeer *v.* Sri Ranga Ramanuja Jeer, 350
St. Helens Smeltings Co. *v.* Tipping, 277
St. James' Club, 190
Stalkartt *v.* Gopal Panday, 228, 251, 256, 257, 260
Stanley of Alderley *v.* Shrewsbury, 91, 311
"Star" Newspaper Co. Ltd. *v.* O'Conner, 166
State *v.* Ganeshjew Mahapravu, 26
State Bank of India *v.* J. S. Ramamoorthy, 122
State for India *v.* Ambalarana Pandara Sannadhi, 102
State of Andhra Pradesh *v.* G. V. Suryanarayana, 95
State of Bihar *v.* Rani Sonabati Kumari, 51
State of Gujarat *v.* Mangal Traders, Jamnagar, [54]
State of Karnataka *v.* Venkataraj, 75
State *v.* Orissa Oil Industries, 57, 96
State of Orissa *v.* Puri Municipality, 110
State of Rajasthan *v.* Swaika Properties, 348
State of West Bengal *v.* B. K. Mondal & Sons, 5
State Railroad Cases, 68
Steele *v.* Gourley, 190
Stephens *v.* Trustees of the Port of Bombay, 56
Sterling General Insurance Co. Ltd. *v.* Planters Airways P. Ltd., 5
Stewart *v.* Chew, 227
Stockport Waterworks Co. *v.* Potter, 92
Storer *v.* Great Western Ry. Co., 172, 179

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

Strachey *v.* Municipal Board of Cownpore, 345
Straight *v.* Burn, 79, 86, 288, 291, 292
Sturgeon *v.* Hooker, 106
Subbarao *v.* Jaganadha Rao, 104
Subba Naidu *v.* Haji Badsha Suhib, 67, 75, 165, 166
Subba Naidu *v.* Varadarajuli, 158
Subra Rama *v.* Venkat Subra, 198
Subrayan *v.* Kochuvarkey, 53
Sudharam Patar *v.* Sudharam, 191
Sukhdev Singh *v.* Bhagatram, 153
Sultan Nawaz Jung *v.* Rustomji Nanabhai, 298, 292, 294
Sunil Chand *v.* Aryodaya Spg. & Wvg Mills, 164
Surat City Municipality *v.* Chunilal Maneklal Ghandi, 24
(The) Surat City Municipality *v.* Tyabji Danbhāi, 206
Surendra Keshub *v.* Doorgasundery, 205
Surendra Narain Singh *v.* Hari Mohan Misser, 77, 243
Surendra Singh *v.* Lal Sheoraj, 45
Syed Farzand Ali *v.* Nashir Beg, 350
Syed Reza Ali *v.* Bhikun Khan, 160

T

T. Panneerselvam *v.* Boylis, 2
Tagore *v.* Tagore, 139
Tahal *v.* Bisheshar, 156
Talbot *v.* Ford, 178
Talbot *v.* Hope Scott, 234
Taller *v.* Carteret, 34
Tantussi *v.* Molli, 192
Tapling *v.* Jones, 289
Tara Chand Agarwalla *v.* Union of India, 95
Taramoney Dossee *v.* Kistnogovind Sein, 38
Tarruck Chunder *v.* Harri Shunker, 72
Tarini Charan Bose *v.* Debnarayan Mistri, 236, 238, 240
Tarinee Churn Bose *v.* Ramjee Pal, 236
Taylor *v.* Portington, 153
Taylor *v.* Virasami, 329
Telegraph Despatch, & Co. *v.* McLean, 68
Thakur Dass *v.* Bhawanji, 271
Thandavan *v.* Filliamma, 158
The Advocate-General of Bombay *v.* David Haim Devaker, 192, 193
The Archdiocess of Hydrabad *v.* Dr. J. Jaswanthantha Rao, 57
The Bank of Bengal *v.* Dinonath Roy, 30
The Bengal Banking Corporation *v.* S. A. Mackertich, 158, 161
The Brahmaputra Tea Co. Ltd. *v.* Scarth, 163
The Durham and Sunderland Railway *v.* Wawn, 256
The East Indian Railway Co. *v.* The Bengal Coal Co., 34, 35, 36, 38
The Hospital for Sick Children *v.* Walt Disney Production Inc. 320
The Irrawaddy Flotilla Co. *v.* Bhugwandas, 139, 140
The Municipal Commissioners for the Town of Madras *v.* Branson, 206

CENTRAL LIBRARY

Thiagaraja *v.* Emperor, 4
Tholappala Charlu *v.* Venkata Charlu, 32, 344
Thomas *v.* Williams, 22
Thompson-Schwat *v.* Costaki, 274
Thorne *v.* B. B. C, 347
Thornley *v.* Skoines, 44
Thornton *v.* Finch, 197
Thorpe *v.* Brumfitt, 270
Tikamchand *v.* Santoke, 71, 115
Tipping *v.* Eckersley, 59
Tipping *v.* St. Helens Smelting Co, 275
Tituram Mukerji *v.* Cohen, 42
Tod Heatley *v.* Benham, 270, 275
Tonson *v.* Walker, 59
Tophans Ltd. *v.* Sefton, 164
Tullaram *v.* Corporation of Calcutta, 206
Tussaud *v.* Tussaud, 331
Twining *v.* Morrice, 177
Twort *v.* Twort, 255, 256
Twycross *v.* Dreyfuss, 24

U

Uda Begam *v.* Imam-ud-din, 69, 72, 73
Uderam Kessaji *v.* Hyderally Abdul Khayum, 4, 39, 117
Udit Singh *v.* Kashi Ram, 307
Ulagappan Ambalam *v.* Chidambram Chetty, 82, 264
Ulfatunnissa Elahijan Bibi *v.* Hosain Khan, 158
Umed Kika *v.* Nagindas, 153
Umesh Chandra *v.* Nibaran Chandra, 11, 109
United Commercial Bank *v.* Bank of India, 57, 184
Union of India *v.* Oswal Woolen Mills Ltd, 26, 348
United States *v.* Prioleau, 22, 41
Universal City Studios Inc. *v.* Mukhtan & Sons, 325
U. P. C. F. Ltd. *v.* Singh Consultants & Engineers (P) Ltd., [54]
Upendranath Brahmachari *v.* Union Drug Co., 331

V

Vachhani Keshabhai *v.* Vachhani Nabha Bavaji, 40
Vaish Degree College *v.* Lakshmi Narain, 153
Vaman *v.* Municipality of Sholapur, 188, 189, 203, 206, 208
Varadacharyula *v.* Narasina Charyula, 120
Vasant Diwakar *v.* Union of India, 108
Vavasour *v.* Kemp, 24
Venkanna *v.* R. Venkatarao, 45
Venkopadhyaya *v.* Kavari Hengusu, 71
Venkata Chellam *v.* Veerappa, 111
Venkata Chalam Chetly *v.* Andiappan Ambalam, 231
Venkat Dharmaji Gontalwar *v.* Vishwanath, 143

CENTRAL LIBRARY

Venkatachala *v.* Kuppusami, 232
Venkatachalam *v.* Zeminder of Sivaganga, 305
Venkata Niloba *v.* Kishan Dadarao, 84
Venkatapathi Naidu *v.* Terumalai Chetti, 136
Venkatesa Tawker *v.* Ramasami Chettiar, 41, 116, 118, 119, 120, 121, 122
Venkayya *v.* Ramasami, 237, 243
Venkayya *v.* Venkatasubbayyar, 159
Vickers *v.* Vickers, 152
Vidyasagar *v.* Anand Swarup, 351
Vijoy Kumar Gupta *v.* Mahi Pal, [53]
Virchand Lalchand *v.* Kumaji, 160
Virdachale Nattan *v.* Ramasvam Nayakan, 185, 186
Vishnu *v.* Rango Ganesh Purandare, 307
Vithalrao *v.* Vaghoji, 35, 36
Von Joel *v.* Hornsey, 313
Vulcan Iron Works *v.* Bishumbhur Prosad, 33, 117

W

Waghela Rajsangji *v.* Sheikh Masludin, 4
Walford *v.* Walford, 47
Walke's case, 11
Walton *v.* Johnson, 28
Waman Ramchandra *v.* Dhondiba Krishnaji, 159
Ware *v.* Regent's Canel Company, 56
Wartherspoon *v.* Currie, 334
Warner Brothers Pictures Inc. *v.* Nelson, 323
Waterhouse *v.* Waterhouse, 230
Watkins *v.* Maude, 173
Watson & Co. *v.* Ram Chand Dutt, 254, 357, 258
Wavell *v.* Watson, 71
Waziram *v.* Babu Lal, 198
Webster *v.* Dillon, 166
Wedgwood *v.* Adams, 178
Weldon *v.* Dicks, 69, 321
Wellesley *v.* Mornington, 50
Wertheimer, 190, 192
West End Watch Co. *v.* Berna Watch Co., 331
Western Counties Manure Co. *v.* Lawes Chemical Manure Co., 221
White *v.* Mellin, 221
Whitbread *v.* Jordan, 197
Whitelegge *v.* Whitelegge, 234
Whitwood Chemical Co. *v.* Hardman, 166
Wilke's Case, 42
Wilkinson *v.* Hayarth, 256
Williams *v.* Earl of Jersey, 271
Wilson *v.* Church, 47
Wilson *v.* Townsend, 302
Wimbledon Local Board *v.* Croydon Rural Sanitary Authority, 20

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Winter Garden Theatre *v.* Millenium, 164
Wolverhampton and Walsall Railway Co. *v.* London and North-Western Railway Co., 166
Witter *v.* Lyon, 51
Wren *v.* Wield, 221
Wrixon *v.* Condran, 266
Wutzler *v.* Sharpe, 306
Wood *v.* Conway Corporation, 277
Wood *v.* Cooper, 270
Wood *v.* Gariffith, 156
Wood *v.* Sutcliffe, 62, 65, 80, 88, 296
Wood *v.* Wood, 192
Woodman *v.* Robinson, 61
Wyld *v.* Silver, 349
Wynne *v.* Newborough, 26

Y

Yamin-ud-Dowlah *v.* Ahmad Ali Khan, 16, 39, 123
Yaro *v.* Sonaullah, 81, 102, 293, 294, 299
Yates *v.* Jack, 300
Yenkoba Balshet Kasar *v.* Rambhaji, 34
Yeomans *v.* Kilvington, 45
Yousif Salama, 136

Z

Z Ltd. *v.* A. & Ors., 135
Zabada Jan *v.* Muhammad Taiab, 107, 108
Zamila Khatoon *v.* Umar, 118

CENTRAL LIBRARY

BIBLIOGRAPHY

Beach's *Injunctions*
Bennet's *Receivers*
Corpus Juris Secondum (U.S.A.), vols. 17, 43, 43A
Clark's *Rules and Orders*
Clerk and Lindsell on *Torts*, 15th ed.
Collett's *Law of Specific Relief in India*
Collett's *Law of Torts and the Measure of Damages*
Collett's *Specific Performance*
Comyn's *Digest*
Copinger and Skone James on *Copyright*, 12th ed.
Cowell's *Tagore Law Lectures* (of 1872)
Das, L. M.'s *Law of Riparian*, TLL 1889
Dongel's (Edward) *Contempt*, Ed. 1939
Drewry's *Injunctions*
Eden on *Injunctions*
Field's *Evidence*
Fry on *Specific Performance*, 6th ed.
Gale on *Easement*, 15th ed.
Gatley on *Libel and Slander*, 8th ed.
Goddard on *Easement*, 3rd ed.
Goyel's *Law of Injunction*, Ed. 1987
Halsbury's *Law of England*, 4th ed., vols. 6, 9, 14, 24, 45
Hanbury and Maudsley on *Modern Equity*, 12th ed.
High on *Injunctions*
High on *Receivers*
Hilliard's *Injunctions*
Innes' *Principles of the Law of Torts*
Iyenger's *Copyright Act and Rules*, 5th ed.
Iyer (Ramaswamy) on *Torts*, 8th ed.
Joyce's *Doctrines*
Joyce on *Injunctions* (1872)
Kerly's *Law of Trade Mark and Trade Names*, 10th ed.
Kerr on *Injunctions*, 6th ed.
Kerr on *Receivers*, 16th ed.
Katiyar's *Easements and Licences*, 10th ed.
Langan and Handerson's *Civil Procedure* 3rd ed.
Lindley on *Partnership*, 14th ed.
Mathwews on *Restraint of Trade*
Mayne's *Hindu Law*, 11th ed.
Mayne and McGregor on *Damages* 15th ed.
McGregor on *Damages* 15th ed.
Michell's *Law of Easements*
Mustille & Boyd's *Commercial Arbitration*, Ed. 1982
Narayanan's *Patent Law*, 2nd ed.
Nelson's *Commentaries on the Specific Relief Act*, ed. 1894

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Oswald's *Contempt of Court*, 3rd ed.
Pollock & Mulla's *Contract and Specific Relief Act*, 10th ed.
Pollock on *Torts*, 4th ed.
Pollock and Wright on *Possession*
Ramaswamy Iyer on *Torts*, 8th ed.
Roy Chowdhury & Saharay's *Arbitration*, 2nd ed.
Salmond and Heuston on *Torts*, 18th ed.
Sarkar on *Civil Procedure*, 7th ed.
Sarkar on *Evidence*, 13th ed.
Sarkar's *Specific Relief Act*, 13th ed.
Sebastion's *Law of Trade-Mark*, 3rd ed.
Shortt on *Extra Legal Remedies*
Smith's *Chancery Practice*
Smith's *Leading Cases*
Smith's *Principles of Equity*, Ed. 1888
Smith's *Principles of Equity*, 2nd ed.
Smoult & Ryan's *Rules & Orders*
Snell's *Principles of Equity*, 28th ed.
Spelling's *Extraordinary Relief*
Spence's *Equity*
Spencer's *Equitable Jurisprudence*
Spencer's *Equitable Jurisdiction of the Court of Chancery*
Story's *Equity Jurisprudence*
Sweet's *Law Dictionary*
Terrell on *the Law of Patents*, 12th ed.
Underhill
Wertheimer
White & Tudor, *L. C.*, 5th ed.
Williams (Glanville) and Happle: *Foundations of the Law of Torts*, 2nd ed.
Winfield and Jolowicz on *Torts*, 12th ed.
Woodroffe's *Law relating to Receivers*
Woodroffe & Ameer Ali's *Civil Procedure Code*

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ADDENDA

[Add at p. 11 before last para]

Exercise of discretionary power of injunction.—

There can be no doubt that the jurisdiction and power of the civil court, if an appropriate case is made out for exercise of its discretion under Order 39 of C.P.C. is not in any manner hampered merely because proceedings under Section 145, Cr. P.C. for maintaining peace are initiated—*Rati Ram* v. *Ram Bhaj Gupta*, A.I.R. 1987 Del. 344.

[Add at p. 76 after para 1]

Ad interim injunction in a specific performance suit.—

In order to entitle ad interim injunction it is incumbent upon the plaintiff to show that he has a *prima facie* case and further also to show that balance of convenience lies in the grant of *ad interim* injunction prayed for otherwise irreparable injury would occasion to him—*Vijay Kumar Gupta* v. *Mahi Pal*, A.I.R. 1987 Del. 345.

[Add at p. 76 after para 1]

Bank Guarantee.—

A bid guarantee furnished by a contractor along with the bid as required by the notice inviting tenders was withdrawn by the contractor before acceptance. Temporary injunction was issued restraining the bank for making payment as a bid guarantee could only be invoked if the contract were to be awarded to the contractor and they had failed to pay the amount or to perform their part which stage never arose. Therefore the bank guarantee could not be invoked in terms of the contract as there was a *prima facie* case exist of issue of injunction restraining the bank from making the payment. The balance of convenience is also clearly in favour of the contractor—*Kirloskar Pneumatic Company Ltd.* v. *National Thermal Power Corporation Ltd.*, A.I.R. 1987 Bom. 308.

[Add at p. 127 after para 1]

Grant of Ad interim injunction in a suit for specific performance of sale of suit property.—

Rule 1 of Order 39 of the C.P.C. clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of *lis pendens* as enacted in Section 52 of the T.P. Act was regarded to have provided all the panacea against *pendente lite* transfers, the Legislature would not have

CENTRAL LIBRARY

provided in Rule 1 for interim injunction restraining the transfer of suit property—*Muktakesi Dawn* v. *Haripada Mazumdar*, A.I.R. 1988 Cal. 25.

[Add at p. 144 before last para]

Injunction under Section 41 of the Arbitration Act and Order 39 Rule 1 of the C.P.C. in respect of Bank Guarantee.—

It is not the decision that there should be a *prima facie* case. In order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of bank guarantee, there should be serious dispute and there should be a good *prima facie* case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Otherwise the very purpose of bank guarantees would be negatived and the fabric of trading operation will get jeopardised—*U. P.C. F. Ltd.* v. *Singh Consultants and Engineers (P) Ltd.*, (1988)1 S.C.C. 174 para 28.

[Add at p. 323 before last 2 lines]

Injunction in infringement of copyright.—

Only an averment made in the plaint can be seen at the stage of an application for *ad interim* injunction. When the plaintiff have pleaded the necessary facts in the plaint to invoke territorial jurisdiction of the Court that would be enough for the court to deal with the matter. When the plaintiff have established a *prima facie* case of copying to which the defendants have to answer and the balance of convenience is clearly in favour of grant of injunction to the plaintiff. Unless the defendants are restrained by grant of temporary injunction during pendency of the suit irreparable injury and loss which cannot be estimated in terms of money will be caused to the plaintiffs by the defendants continuing to manufacture, sell or deal in their machine which is a substantial reproduction of the trading in which the plaintiff had copyright—*John Richard Brady* v. *Chemical Process Equipments P. Ltd.*, A.I.R. 1987 Del. 372.

[Add at p. 337 after 3 lines]

Ad interim injunction in passing off and using trade mark action —

Once the plaintiff has established that he has got a *prima facie* case in respect of some and similar goods he would be *prima facie* entitled to *ad interim* injunction and heavy burden would lie upon the defendant to prove that the plaintiff should not be granted an interim injunction—*Hindustan Radiators Co.* v. *Hindustan Radiators Ltd.*, A.I.R. 1987 Del. 353.

[Add at p. 349 after 3rd para]

Anticipatory Injunction.—

Court is not required to give any anticipatory injunction that the authorities shall not carry out any raid or search except in accordance with law and except for reasonable cause and after satisfying the requirements of law. Such injunction of the Court is absolutely unjustified— *State of Gujarat* v. *Mangal Traders, Jamnagar*, A.I.R. 1987 Guj. 234.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

THE LAW RELATING TO INJUNCTIONS IN INDIA

CENTRAL LIBRARY

THE LAW RELATING TO INJUNCTIONS IN INDIA

INTRODUCTORY

Synopsis

1. Present Statute Law relating to the subject in India: Previous Law ;
2. Is and was founded on principles being the same as those of English Law ;
3. Assistance of Foreign decisions ;
4. The issue of injunctions is a form of specific relief ;
5. Meaning of term "specific relief" ;
6. Preventive relief;
7. Reliefs by Specific Performance, Injunction, and Receiver, belong to the same branch of the law;
8. But there is a distinction between the remedies ;
9. General principle upon which an Injunction is issued ;
10. Protective relief ;
11. The grant of preventive or protective relief is purely discretionary.

I. Present Statute Law relating to the subject in India.—The law relating to the issue of injunctions in civil suits,[1] in India,[2] is contained in the Civil Procedure Code[3] and the Specific Relief Act,[*] which supplements the Code' and occupies a middle ground between substantive law on the one hand, and procedure on the other. The granting of perpetual injunctions is regulated by the Act, while temporary or, as they are sometimes called, interlocutory injunctions, which are simply intended to preserve the *status quo* pending the decision, and which may be granted at any period of a suit, are treated as of the nature of procedure and are therefore regulated by the Code.

The court has also power to grant temporary or interim injunction under section 41(b) of the Arbitration Act, 1940 read with paragraph 2 of the Second Schedule thereto. Principles on which the court shall grant an interim order

---

1. The Criminal Procedure Code (Act II of 1974) ss. 142, 144 deals with the issue of injunctions by Criminal Courts in cases of nuisance; and s. 83 with the appointment of Receivers of attached property.

2. That is, the territories as specified in the First Schedule to the Constitution of India. See Art. 1 of the Constitution.

3. Act V of 1908 as amended by Act. 104 of 1974. O. 39 (Temporary Injunctions), O. 40 (Appointment of Receivers). Sections I and 155 to 158 of the Code extend to the whole of India.

* Act 47 of 1963, ss. 36-42, Part III (Preventive Relief).

CENTRAL LIBRARY

of injunction are laid down by the Supreme Court in *H.M.K. Ansari & Co. v. Union of India.*[4]

The Court has also inherent power to issue a temporary injunction under section 151 of the Civil Procedure Code when the case does not fall within the terms of Order 39, Rules 1 & 2 of the CPC. The Supreme Court in *Monoharlal* v. *Seth Hiralal* (AIR 1962 SC 527) has held that the Court has power under Section 151 to issue injunction in a case not falling within Order 39 Rule 1 and Rule 2.

A suit for specific performance was dismissed for default and an application for restoration of the suit was made. Pending the restoration application the respondent was not entitled to invoke to his aid O. 39 R. 1, CPC but notwithstanding O. 39 R. 1, the Court possesses the power under section 151 CPC to grant interim injunction if the facts could not be brought within the four corners of O. 39 R. 1, but in the interests of justice. Section 151, CPC is to supplement to the powers expressly provided such as O. 39, R. 1, CPC. In the circumstances order of injunction can be passed under section 151 of the C.P.C. (*T. Panneerselvam* v. *Baylis*, AIR 1986 Mad 284.)

The Chartered High Courts i.e., the High Courts of Calcutta, Bombay and Madras also have inherent power under the Letters Patent to issue injunction in appropriate cases.

Previous Law.—The earlier Codes (Acts VIII of 1859 and X of 1877 and Act XIV of 1882) dealt with the subject of the issue of injunctions.[5] Act X of 1877, however, on this subject contained provisions of a more complete character,[6] and which were, in fact, with some minor alterations, the same as those of the last Code. It introduced the provision as to the issue of injunctions where any property in dispute in a suit is in danger of being wrongfully sold in execution of a decree,[7] as also in cases where the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors.[8]. It further enacted that no attachment for breach of an injunction should remain in force for more than one year.[9] Prior to the establishment of the High

---

4. AIR 1984 SC 29 (The court has got the power to pass an order of injunction only for the purpose of and in relation to arbitration proceedings before the court). See. Roy Chowdhury & Saharay's *Arbitration Law* (2nd ed.), p. 276 ; *Jute Corpn. of India* v. *Konark Jute Ltd.*, AIR 1986 Ori 238.

5. *See* Act VIII of 1859, ss. 92, 93, 95, 96 (Injunctions), Act X of 1877, ss. 492—497 (Injunctions).

6. O.39 of the present Code corresponds with ss. 92, 93, 95, 96 of Act VIII of 1859.

7. *See* Civil Procedure Code, O. 39, r. I; see *Brojendra Kumar Rai Choudhuri* v. *Rup Lall Doss*, 12 C., 515, 517 (1886), in which it was pointed out that the then current and preceding Codes had altered the law laid down in *Roy Luchmiput Singh Bahadur* v. *The Secretary of State for India*, 11 B. L. R., Ap., 27 (1873), and *Doorga Churn Chatterjee* v. *Ashootosh Dutt*, 24 W. R., 70 (1875).

8. *See* Civil Procedure Code, O. 39, *r.* 1.

9. *See* O. 39, *r.* 2.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Courts, the Supreme Courts of the Presidencies granted injunctions following the principles and practice of the Court of Chancery in England.[10]

2. Is and was founded on principles being the same as those of English law.—The best guides in the matter of interference by way of injunction have been judicially stated to be the principles which determine the action of Courts of Equity in England.[11] It is, in fact, on these principles that the relief given in Indian Courts by injunction is, in the main[12] founded; and this relief is, in substance, the same as that granted by Courts in England.[13] But since in India, the Courts must follow the words of the statute,[14] and since the rules for the guidance of Indian Courts are to be found in the Specific Relief Act, the English cases to which reference can be made are only of use as illustrative of the principles embodied in the sections of the Act from the aspect that the Courts of Chancery in England have had to treat matters of a similar description.[15] Yet when there is no specific rule, the Mofussil Courts[16] and High Courts[17] will be guided by the English Case-law, so far as it is applicable, not because it is English, but because it is in accordance with that rule of equity and good conscience[18] which these Courts are, in such circumstances, enjoined

---

10. *See* as to Injunctions, *Marsden* v. *Long*, Morton's Decisions, 24 (1800).

11. *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B. 266, 284 (1881), *per* Sargent, J., and see *ib.*, p. 279. And in *The Land Mortgage Bank of India* v. *Amedbhoy Habibbhoy and Kesowram Ramanand*, 8 B., 35, 67(1883); *Chunilal Mancharam* v. *Manishankar Atmaram*, 18 B, 616, 623 (1893); *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., 474, 488 (1894); *The Shamnuggur Jute Factory Co.*, v. *Ramnarain Chatterjee*, 14 C., 189, 199, 200 (1886). *Chaturbhuj* v. *Mansukram*, 27 Bom. L. R., 73 (1924).

12. Thus it had been said that s. 57 of Act I of 1877 (now s. 42 of 47 of 1963) "does in some respects apparently depart from principles which guide Courts of Equity in England :" *per* Candy, J., in *Callianji Harjivan* v. *Narsi Tricum*, 18 B. 702, 714 (1894).

13. See Whitley Stokes *op. cit.* ii, 928, 940 939. *The Shamnuggur Jute Factory Co.* v. *Ram Narain Chatterjee*, supra; *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 214, 219 (1887); *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 252, 259 (1888). *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., 252, 266 (1889): *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B., at p. 280 (1881).

14. *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702, 711 (1894).

15. *Shadi* v. *Anup Singh*, 12 A., 436, 439 (1889), *per* Straight, J.

16. *Chunilal Mancharam* v. *Munishankar Atmaram*, 18 B., 616. 623 (1893).

17. Letters Patent, 1862, s. 20; Letters Patent, 1865, ss. 20, 21 (Calcutta). The Letters Patent originally establishing the High Courts at Madras and Bombay bear date the 26th June, 1862, and are the same, *mutatis mutandis*, as those establishing the High Court at Fort William in Bengal. The Letters Patent, 1865, for the High Court at Madras are of the same date and similar in all respects to that for the High Court at Fort William, *mutatis mutandis*. The Letters Patent, 1865, for the High Court at Bombay are of the same date and are in nearly every respect the same as those for the Bengal and Madras (see Broughton, 404, 405). In regard to the Allahabad High Court (which has extraordinary original civil jurisdiction only), *see* Letters Patent, 1866, ss. 13, 14, which correspond to ss. 20 and 21 of the Letters Patent, 1865 (Calcutta).

18. Equity and good conscience are "generally interpreted to mean the rules of English law, if found applicable to Indian society and circumstances :" *Waghela*

CENTRAL LIBRARY

to follow.[19] The Presidency High Courts, in the exercise of their ordinary civil jurisdiction, may, in such circumstances, have recourse to the equitable jurisdiction which the High Courts have inherited from the Supreme Court.

3. Assistance of Foreign decisions.—The (old) Specific Relief Act, 1877 which was replaced by the Specific Relief Act, 1963 was held not to be exhaustive. Under that Act it had been expressly stated that the Act was founded on the English equity jurisprudence and consequently it was permissible to refer to the English Law on the subject wherever the Act did not deal specifically with any topic (*Hungerford Investment Trust Ltd.* v. *Haridas Mundra*, AIR 1972 SC 1826).

It is significant that the Specific Relief Act, 1963 although replacing the (old) Act of 1877 did not consider it expedient to change that position by consolidating the entire law on the subject. It has been observed by the Privy Council repeatedly that it is dangerous to construe an Indian Statute by reference to an English enactment however closely their language may approximate (*Thiagaraja* v. *Emperor*, 74 IA 132 : AIR 1947 PC 113).

It is not permissible to enlarge or restrict the language of an Indian statute by an interpretation of the English Law doctrines (*Chhunamal* v. *Moolchand*, 55 IA. 154 : AIR 1928 P.C. 99).

An Indian enactment of Indian Legislature is being construed by its language uninfluenced by any consideration of the provisions of the English Law upon which it may be based (*Ramanandi* v. *Kalawati*, 55 IA 18 : AIR 1928 PC 2).

It is not legitimate to apply English decisions to the construction of an Indian statute specifically where the former is differently worded (*Lasadin* v. *Gulab Kunwar*, 59 IA 376 : AIR 1932 PC 207).

Indian Legislature has gradually evolved a system of its own somewhat different from the English Law and purporting to be self-contained. But where the provisions of an Indian statute are based on the English Law or are identical with each other, it may be advantageous to refer to English Law when the provisions of the Indian Act are not clear (*Iswarayya* v. *Swarnam*, 58 I.A. 350 : AIR 1931 PC 334).

English decisions are entitled to respect when they are based on principles of justice, equity and good conscience though they have no absolute authority. It has, however, been recognised that although assistance may be derived from consideration of cases on those branches of English jurisprudence the language of the statute must ultimately prevail. To ascertain true meaning one must turn to the very terms of the statute itself adverse from all considerations. Where all the terms are plain, the Court should not resort to foreign law specifically where the English decisions are differently worded (*Sales Tax*

Rajsangji v. *Sheikh Masludin*. 11 B. 551, 561 (1887). *Maharana Shri Ranmal Singji* v. *Vadilal Vakhatchand*, 20 B., 61, 69 (1896) : *see* also *The Shamnuggur Jute Factory Co.* v. *Ram Narain Chatterjee*, 14 C. 189, 199, 200 (1886); *Callianji Harjivan* v. *Narsi Tricum*, supra, 713 (1894) ; *Chunilal Mancharam* v. *Manishankar Atmaram*, supra.

19. See *Rash Behary Dey* v. *Bhowani Churn Bose* (1906), 34 C. 97 ; *Uderam Kessaji* v. *Hyderally Abdul Khayum* (1908), 33 B., 469 ; *Mungle Chand* v. *Gopal Ram* (1906), 34 C., 101.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Officer v. *Kanhailal*, AIR 1959 SC 135 : *Lasadin* v. *Gulab Kanwar* 59 IA. 376: AIR. 1932 PC 207).

By series of decisions of the Privy Council and of the Supreme Court the following principles and practice of interpretation of an Indian Statute with reference to English or Foreign Law are firmly established :—

(1) When the section of the English statute is *parameteria* with the provisions of an Indian statute then interpretation placed by English Courts upon the provisions of the said English statute has persuasive value (*Sterling General Insurance Company Limited* v. *Planters Airways Private Ltd.*, AIR 1975 SC 415).

(2) The reference to English decisions in dealing with a problem in India should be made with considerable caution. No doubt, a certain amount of assistance can, with caution, be taken from them, but the problem must be resolved, in the ultimate analysis, with reference to Indian law (*Indian Molases Company (Private) Ltd.* v. *C.I.T., West Bengal,* AIR 1959 SC 1049 ; *CIT, Kerala* v. *Malayalam Plantation Limited*, AIR 1964 SC 1722 ; *Rajit D. Udeshi* v. *State of Maharastra*, AIR 1965 SC 881).

(3) The assistance of foreign decision is subject to the calculation that prime importance is always to be given to the language of the relevant Indian statute, the circumstances and the setting in which it has been enacted and the Indian conditions in which it has to be applied. It is not to be forgotten that there is always an element of risk in taking ready and hasty assistance from foreign decisions (*State of West Bengal* v. *B. K. Mondal & Sons*, AIR 1962 SC 779 ; *CIT, Madras* v. *Gajapathy Naidu*, AIR 1964 SC 1653).

(4) "Statutory construction must be home spun even if hospitable to alien thinking". *Bangalore Water Supply & Sewarage Board* v. *A. Rajappa*, AIR 1978 SC 549 at 559).

(5) Reference to English decisions was a common practice in the pre-constitution period owing to historical reasons. The practice was not given up in spite of severe warning and caution administered by the Privy Council (*Gajanan* v. *Seth Brindaban*, AIR 1970 SC 2007).

(6) When an Indian Act is modelled on a prior English Act, decisions construing the provisions of the English Act are referred to as a helpful guide for construing corresponding provisions of the Indian Act. (*Sachindra Nath Banerjee* v. *Sitaram Agarwalla*, AIR 1966 SC 955 ; *Godhra Borough Municipality* v. *Godhra Electricity Co. Ltd.*, AIR 1968 SC 1504 ; *Nawn Estate Private Ltd.* v. *CIT., West Bengal*, AIR 1977 SC 153).

In India a practice has also developed to refer to American decisions to resolve problems arising out of Indian situations. Although the growth of equity jurisprudence in America like that in India is based on the practice of the Court of Chancery in England, yet the decisions of the American Courts can certainly enlighten in the administration and development of the law, except so far as altered by statutory enactment. But the application of American decisions ought to be made with great caution. In *re. Missourie Steamship Co.* (42 Ch. 321) Lord Halsbury has rightly observed "Among other things, it involves an enquiry which often is not an easy one whether the law of America on the subject in

CENTRAL LIBRARY

which the point arises is the same as our own." In *Jagannath* v. *Authorised Offcier* (AIR 1972 SC 425) the Supreme Court of India has held that the decisions of the American Supreme Court have great persuasive force and too much reliance should not be made on them.

4. The issue of injunctions is a form of specific relief.—The issue of injunctions, whether temporary or perpetual, is a form of "specific relief." So also is the appointment of a receiver pending a suit.[20] The last Code[21] further provided for the appointment of a receiver of property under attachment and also in the case of insolvent debtors. In Order 40 of the present Code the words "*under attachment*" are omitted ; but provision is made for the appointment of receiver to "*any property*." It has been said that in the former case the appointment of a receiver is "rather a matter of ministerial procedure than of specific relief" ; and in the latter case the receiver is the agent of the creditors[22] and both cases must be distinguished from a receiver appointed by way of specific relief pending a suit.[23]

5. Meaning of term "specific relief". The term "specific relief" meant more particularly those classes of relief which were defined by, and granted in civil suits under the provisions of Act 47 of 1963[24] but the full significance of which is, however, only to be learnt from the history in England of legal actions and of the interference by Courts of Equity with the limited and imperfect remedial jurisdiction of the Courts of Common Law.[25] "The remedies for the non-performance of a duty enforceable by law are either compensatory or specific. The compensatory remedy is by the award of damages.[26] This remedy is often either useless or inadequate—useless where the person ordered to pay them is insolvent, and inadequate, when for instance, the duty is to trans-

---

20. Act 1 of 1877, s. 5. Omitted from Act 47 of 1963.

21. S. 503.

22. *See Ex parte Warren...In re Joyce*, L. R., 10 Ch. Ap., 222. In the matter of *Badal Singh* v. *Birch*, 15 C., 762, 764 (1888).

23. Collett's Law of Specific Relief in India (1882), p. 236.

24. [Specific reliefs granted under the present Act 47 of 1963 are—(1) Recovery of possession of property (ss. 5-7) ; (2) Specific performance of contract (ss. 9-12) ; (3) Rectification of instruments (s.26) ; (4) Rescission of contract (ss. 27-28) ; (5) Cancellation of instruments (ss. 31-33) ; (6) Declaratory decrees (ss. 34-35) ; (7) Preventive relief by way of injunctions (ss.36-42)]. Other specific remedies commonly enforced by Indian (as by English) Courts are—(1) taking an account of the property of a deceased person and administering the same; (2) taking accounts of a trust and administering the trust-property; (3) the foreclosure of the right to redeem, or the sale of mortgaged property ; (4) redemption and reconveyance of mortgaged property ; (5) dissolving a partnership, taking the partnership accounts, realizing the assets, compelling each partner to pay the balance due from him, and discharging the debts of the partnership.

25. *See* Nelson's *Commentaries on the Specific Relief Act* (1894); Introduction. pp. 1—70 ; where a short historical account is given. *See* further Spence's *Equitable Jurisdiction of the Court of Chancery* ; Snell's *Principles of Equity* ; Story's *Equity Jurisprudence* : Hanbury and Maudsley: *Modern Equity* (12th ed).

26. The compensatory remedy in matters of contract has been to some extent dealt with by s. 73. Act IX of 1872. The Specific Relief Act deals with it only so far as it is either supplementary or alternative to specific relief.

CENTRAL LIBRARY

fer particular immovable property, or a movable to which special interest is attached. The specific remedy is enforced by directing the party in default to do, or forbear, the very thing which he is bound to do or forbear, and in case of disobedience, by imprisonment, or attachment of his property, or both.[27] When no one is in default, it is enforced by making such declarations and orders as the nature of the case may require."[28] Courts of Common Law gave specific relief, in the case of immovable property, in the action of ejectment,[29] and in the actions of detinu[30] and replevin for the recovery of the specific possession of personal chattels, in neither of which latter actions, however, was there any certainty of recovering anything but damages. With these and some other exceptions, the redress given by the latter Courts in all actions, whether founded on contract or tort, sounded in damages only. Equity therefore, where necessary, supplemented the deficiencies of this remedial jurisdiction, by decreeing the restitution *in specie* of specific movable property, by compelling the performance of contracts and by the administration of both a protective and preventive justice in respect of property, the subject of litigation.[31] Thus, for instance, while in effect the Common Law allowed parties to a contract the election either to perform or to pay damages for non-performance ; equity in cases where there was either no remedy at Common Law or the remedy was inadequate, deprived the defaulting party of such election.[32] So also Equity devised the remedy by injunction in some respects analogous to the equitable remedy of specific performance. For while a decree of specific performance, as its name implies, enforces the performance of some specific act, an Injunction which is the very converse, judicially forbids the performance of some specific act or series of acts.[33]

6. Preventive relief.—When specific relief is granted by preventing a party from doing that, which he is under an obligation[34] not to do, it is called "preventive relief,"[35] and preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.[36]

7. Reliefs by specific performanec, injunction, and receiver, belong to the same branch of the Law.—Reliefs by specific performance, injunction and

---

27. See Civil Procedure Code. O 21. r. 32.
28. Whitley Stocks, *op. cit.* 928.
29. *See* Act 47 of 1963, s. 5; the possessory remedy given by s. 6 is taken from s. 15, Act XV of 1859, and resembles the old English assize of "Novel Disseisin."
30. *See* Act 47 of 1963, s. 7 which embodies, with some change, the Common Law doctrine of detinue.
31. It is these and other forms of redress, in the main equitable (ss. 5,6,7, are common law remedies) which form the material of Act 47 of 1963.
32. Story's Eq. Jur.. § 714; v. *ib.*, Note (*a*) to 13th Amer. Ed., p. 178, and *post.*
33. Smith's Principles of Equity (1888), p. 688: Hansbury & Maudsley: *Modern Equity* (12th ed.) p. 714 ; as to the form, however, of mandatory injunctions in India, see *post.*
34. This term includes every duty enforceable by law. Act 47 of 1963, s. 2(a)
35. *See* Act I of 1877, s. 6. (Omitted from Act 47 of 1963).
36. *See* Act 47 of 1963, s. 36.

CENTRAL LIBRARY

receiver, belong to the same branch of the law. Moreover, the appointment of a Receiver operates as an Injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the receiver except by permission of the Court ;[37] and "an order for an injunction is always more or less included in an order for a receiver. It is not necessary, if a Receiver be appointed, to go on and grant an Injunction in terms."[38] All three forms of relief are dealt with by the Specific Relief Act. The issue of temporary injunctions and the appointment of receivers were, together with the subjects of arrest and attachment before judgement and interlocutory orders, dealt with by the last Code under the single heading of "Provisional Remedies."[39] Relief granted by appointment of a receiver *pendente lite* bears in many respects a close analogy to that by temporary injunction. Both are extraordinary equitable remedies as distinguished from the ordinary modes of administering relief. Both are essentially preventive in their nature, being properly used only for the prevention of future injury, rather than for the redress of past grievances. Both have one common object in so far as they seek to preserve the *res* or subject-matter of the litigation unimpaired, to be disposed of in accordance with the future decree or order of the Court.[40]

8. But there is a distinction between the remedies.—There is, however, a distinction between the remedies in that "specific performance is directed to compelling performance of an active duty, while injunction (though sometimes in a subsidiary way requiring an act to be done) is generally directed to preventing the violation of a negative one. This difference, however, is very great. The remedy of specific performance, relating as it does to active duties, deals in the main only with contracts ;[41] while the remedy of injunction having to do with negative duties, deals not only with contracts, but also with torts, and with many other subjects, among them subjects of a purely equitable nature."[42] Whether, however, the negative duty or duty to abstain, be contractual or general, the injunction which enforces it is the same in nature and form. The general grounds of similarity between relief by receiver and by injunction have been adverted to. Perhaps the principal element of difference between these two im-

---

37. *Mahommed Zohuruddeen* v. *Mahommed Noorooddeen*, 21 C., 85, 91 (1893).

38. Kerr on Receivers; *See* as to Receivers generally Woodroff's "Law relating to Receivers"

39. Act XIV of 1882, Part IV. O. 38, 39 and 40 of present Code.

40. High on Receivers, 16, 17.

41. "From the nature of the case the remedy of specific performance only applies to cases arising out of contract; since it rarely happens apart from contract that one person has a right to the performance of a particular act on the part of another. On the contrary, the cases for which Injunction is a proper remedy have usually no connection with contract. There are, indeed, cases in which one perosn contracts with another not to do a certain act ; and such negative contracts may, as we have seen (p. 656. *Lumley* v. *Wagner*. 1 DeG M. & G., 615), be specifically enforced by means of Injunction." Smith's Principles of Equity, *supra*, 688. *See* also. Hansbury & Maudsley: *Modern Equity* (12th ed.). p. 714.

42. Story, Eq. Jur., 13th Amer. Ed. (1886), p. 179. Note by M. M. Bigelow. Smith's "Principles of Equity", 688.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

portant remedies lies in this : that an injunction is strictly a conservative remedy, merely restraining action and preserving matters *in status quo*, without affecting the possession of the property or fund in controversy ; while the appointment of a receiver is usually a more active remedy, since it changes the possession as well as the subsequent control and management of the property. The Court by an injunction ties up the hands of the defendants, and preserves unchanged, not only the property itself, but the relations of all parties thereto. But in appointing a receiver the Court goes still farther, since it wrests the possession from the defendant and assumes and maintains the entire management of the property or fund, frequently changing its form, and retaining possession through its officer, the receiver, until the rights of all parties in interest are satisfactorily determined. From the points of resemblance already indicated, it is not to be inferred that the appointment of a receiver necessarily follows from the granting of an Injunction or that the two remedies are necessarily inseparable. And while it frequently happens that the Courts are called upon to administer both species of relief in the same action, and at one and the same time, yet it by no means follows that because an injunction is granted a receiver must be appointed, and the two are to be treated as distinct and independent matters. The Court, therefore, may refuse a receiver, although the case presented is a fitting one for an injunction, and although an injunction has already been granted.[43] A distinction exists between the case in which an injunction and that in which a receiver will be issued or appointed respectively. "That distinction seems to be that, while in either case it must be shown that the property should be preserved from waste or alienation ; in the former case it would be sufficient, if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged ; while in the latter case, a good *prima facie* title has to be made out."[44]

9. General principle upon which an Injunction is issued.—Relief, whether it be given by the issue of an Injunction or the appointment of a Receiver, is granted generally upon the principle *quia timet ;* that is, the Court assists the party who seeks its aid, because he fears (*quia timet*) some future probable injury to his rights or interests, and not because an injury has already occurred, which requires any compensation or other relief. So the remedy by temporary injunction being preventive in its nature, it is not necessary that a wrong should have been actually committed before the Court will interfere, since if this were required it would in most cases defeat the very purpose for which the relief is sought by allowing the commission of the act which the complainant seeks to restrain. And satisfactory proof that the defendants

---

43. High, on Receivers, 17, 18, and see *Hall* v. *Hall*, 3 Mac. G., 85, where it was said by the Lord Chancellor that "the rights to those different remedies are essentially distinct and depend upon totally different grounds and circumstances." In *Nasarvanji* v. *Sahajadi*, 24 Bom. L. R., 378 (1922), the Court held that the case was one for a Receiver not an Injunction.

44. *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 465 (1895), per Ghose and Rampini, JJ.

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

threaten the commission of a wrong (which is within their power) is sufficient ground to justify the relief.[45] But there must be proof of an imminent risk of substantial damage.[46] These and other similar precautionary reliefs were formerly granted by Courts of Equity, on Bills *Quia Timet*,[47] to support which it must have been shown, *firstly*, that there was a title in possession or expectancy in the plaintiff, and *secondly*, that there was danger to the property.[48] These bills would now take the form of an action in the nature of a Bill *Quia Timet* and would be brought, in England in the Chancery Division, and in India,[49] in any Court of jurisdiction competent to grant the relief prayed. "The remedy of (final) injunction, like that of specific performance, proceeds upon the theory that there are duties the performance of which, as they stand, ought to be insisted upon,—duties in regard to which an election, as an equivalent, to violate the same upon the terms of making compensation cannot be permitted ; not indeed that all the duties the violation of which may be enjoined, may be enjoined without regard to the question whether damages for a violation could be accurately computed, but that there are duties of a peremptory nature within the operation of the remedy of injunction as well as within that of specific performance. These duties may here, as well as in the law of specific performance, be termed primary, since they are not substitutional."[50] If the Court finds that there is a substantial question to be investigated and that matters should be preserved *in status quo* till the final determination of that question, it is sufficient ground for granting the injunction.[51]

10. Protective relief.—The manner in which the above-mentioned aid is given by Courts of Equity is, of course, dependent on circumstances. They interfere sometimes by the mere issuing of an injunction or other remedial process.[52] But that portion of Equitable jurisdiction which consists in the administration of a protective or preventive justice is not limited to this. The Courts interfere also by orders to pay funds into Court,[53] by directions to give security, by orders for the detention and preservation of property, by other like orders and directions,[54] and by the appointment of a receiver to receive rents or

---

45. Story's Eq. Jur. § 826. High on Injunctions 17—23.

46. *Gangabai* v. *Purshotam Atmaram*, 32 B. 146 (1907) ; following *Fletcher* v. *Bealey* (1885), 28 Ch., 688.

47. Story, Eq. Jur., § § 825—851 and 694.

48. *Satoor* v. *Satoor*, 2 Mad. H. C. R., 810 (1864).

49. v. *ib.* 10, where it was pointed out that the plaint was really in the nature of a Bill *Quia Timet*, but that it did not disclose any of the grounds necessary to support such a bill.

50. Story's *Eq Jur.*, 13th Amer. Ed. (1886), pp. 178, 179, Note by M. M. Bigelow.

51. *Krishna Chandra* v. *Hem Chandra*, 21 C. L. J., 469 (1915).

52. v. *supra*.

53. See *Satoor* v. *Satoor*, 2 Mad. H. C. R., 8, 11 (1864) ["the protection of property which is the subject of litigation by requiring it to be brought into Court is an important part of its (the Court's) jurisdiction"].

54. The Courts in India practically possess all these powers of protective and preventive relief. *See* the interlocutory orders in the last Civ. Pr Code, ss. 498—502, now represented by O.39, rr.5—10. Of these ss. 498—500, 502, were first inser

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

other income,[55] thus adapting their relief to the precise nature of the particular case and the remedial justice required by it; the object being in all cases to preserve property to its appropriate uses and ends.[56]

11. The grant of preventive or protective relief is purely discretionary.—The exercise of the jurisdiction to grant relief by the appointment of a Receiver,[57] or the issue of an Injunction,[58] is not a matter *ex debito justitiæ*, but one which is purely within the discretion of the Court. The latter is not bound to grant such relief merely because it is lawful to do so. But the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal.[59] All questions of discretion are usually questions of degree.[60] Where there is a discretion exercisable the Court is bound to look at all the circumstances of the case.[61] The jurisdiction of the Court to interfere being Equitable is governed upon equitable principles. And therefore the Court will, amongst other things, look to the conduct of the person who makes the application.[62] Where an appeal attacks the exercise of discretion, before the Appellate Courts will interfere on this ground in favour of the appellant, the latter must satisfy such Court that the discretion has been improperly exercised.[63]

The occasions and principles upon which these diseretionary powers will be exercised in the case of Injunctions by Courts in India form the subject-matter of this branch of the law and of the following chapters.

---

ted in the Code of 1877. Section 501 corresponds with s. 91 of the Old Code, Act VIII of 1859. Sections 498—500 were taken from Order 52, Rules 2—4 of the English Judicature Act, and s. 502 from s. 244 of the New York Code. *Note*: In the United States while the right to injunctive relief is sometimes based on constitutional provision, it is often only a right granted by statute, and in the latter case it is either enlarged or limited by the legislature. See 43 C. J. S. § 11).

55. Civ. Pr. Code, O.40 Act 1 of 1877, s. 44.

56. Story's Eq. Jur., § 826; Smith's Principles of Equity, 752.

57. *See* Act I of 1877, s. 44 (Omitted from Act 47 of 1963).

58. *Ib.*, s. 52. *Umesh Chandra* v. *Nibaran Chandra*, 19 C. L. J., 305 (1913).

59. Act 47 of 1963, s. 20(1) (discretion to decree specific performance; *See* Story's Eq. Jur., § 742); the same rule holds good for injunctions in the case of obligations arising from contract; *Calliunji Harjivan* v. *Narsi Tricum*, 18 B., 714 (1894), and the principle is of general application in other cases. For "Discretion, when applied to a Court of law, means discretion guided by law. It must be governed by rule and not by humour: It must not be arbitrary, vague, and fanciful, but legal and regular." *Per* Lord Mansfield in *Wilke's case*. 4 Burr., 2539, cited in *Harbuns Sahai* v. *Bhairo Pershad Singh*, 5 C. 259, 265 (1879); *Abdul Rahim* v. *Tufan Gazi*. AIR 1928 Cal. 584; *Ram Sarup Singh* v. *Mahabir Mahton* AIR. 1960 Pat. 235. *See* also remarks in *Queen-Empress* v. *Chagan Dayaram*, 14 B. 331. 344, 352 (1890), *per* Jardine, J.

60. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., at p. 493 (1894).

61. *Ib.*, at p. 484.

62. *See* Act 47 of 1963, s. 41(i); Kerr on *Inj.*, 6th ed. p. 413; Kerr on *Receivers*, 16th ed. p. 8; see Sarkar's *Specific Relief Act*, 13th ed. p. 530-532.

63. *Shadi* v. *Anup Singh*, 12 A., 438 (1889). *Umesh Chandra* v. *Nibaran Chandra*, 19 C. L. J., 305 (1913).

H2865

CENTRAL LIBRARY

CHAPTER I

INJUNCTIONS GENERALLY

Synopsis

12. Meaning of term "Injunction".
13. Forms of Injunctions :
    (i) Temporary;
    (ii) Perpetual;
    (iii) Mandatory.
14. Origin of the equitable relief by Injunction.
15. Subject-matter of Injunctions.
16. Its classification.
17. Parties :
    (i) In whose favour an Injunction will be granted,
    (ii) Against whom an Injunction may be granted.
18. Essentials to the grant of relief by way of Injunction:
    (i) Relief cannot be granted merely to enforce a penal law;
    (ii) There must be a pending civil action;
    (iii) Cognisance of the action must not be barred ; Maine Moilar *v.* Islam Amanath;
    (iv) The Court must otherwise have jurisdiction to try the suit.
19. "Equity acts *in personam*" ;
    Penn *v.* Lord Baltimore.
20. The application of this maxim in India ; Rajmohun Bose *v.* East India Railway Co. and Moolji Jaitha & Co. *v.* K. S. W. Mills Co. ; Juggodumba Dossee *v.* Puddomoney Dossee.
21. Must be considered with reference to the statutory jurisdiction ; Delhi and London Bank *v.* Wordie.
22. Jurisdiction to issue Injunctions.
23. The exercise to jurisdiction is discretionary.
24. Courts by which an Injunction may be granted:
    (i) Courts by Original Jurisdiction ; Suit for setting aside a decree in an earlier suit and interim injunction in execution of a decree ;
    (ii) Courts of Appellate Jurisdiction ;
    (iii) Courts of Revisional Jurisdiction.
25. Enforcement of orders and decrees issuing Injunctions.
26. Effect and operation of an Injunction.
27. Breach of an Injunction.
28. Compensation for issue of wrongful Injunction.

12. Meaning of term "Injunction."—An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing. In the former case, it is called a preventive or restrictive

CENTRAL LIBRARY

injunction, and in the latter a mandatory injunction.[1] An injunction was, under the old English procedure, a writ issuing by order and under seal of the Court of Chancery and was, with certain exceptions, until the Judicature Act of 1873, a remedy peculiar to that Court.[2] A writ of Injunction[3] may be described to be a judicial process whereby a party was required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. The process, however, was rather preventive than restorative, though it was by no means confined to the former object. Under the present English procedure no writ of injunction is to issue. An injunction is in England,[4] as in India,[5] by judgement or order, and such judgement or order has the effect which a writ injunction in Chancery previously had.

13. Forms of Injunctions.—Duration, as well as the positive or negative character of their commands, determine the several forms of Injunctions, which may be either non-mandatory or mandatory, temporary or perpetual.

(i) Temporary.—In the first place, in respect of duration, injunctions are, either temporary (or, as they are sometimes called, interlocutory) or perpetual. The former are such as are to continue, until a specified time named in the order or until the further order of the Court.[6] They may be granted at any period of a suit and are regulated by the Code of Civil Procedure. The Court may in the case of an injunction under Order 39 of the Code grant it upon such terms as to the duration of the Injunction as it thinks fit.[7] The temporary injunction is merely provisional in its nature and does not conclude a right; its effect and object is merely to preserve the property in dispute *in status quo*, until the hearing or further order, or to prevent future injury, leaving matters as far as possible *in status quo*, until the suit in all its bearings can be heard

---

1. Halsbury's *Laws of England* (4th ed.) vol. 24, para 901. An injunction is a judicial order whereby a person is required to do, or to refrain from doing, certain Acts (43 C. J. S. § 2).

2. Kerr on *Injunctions*, 6th Ed., p. 1; Smith's *Chancery Practice*, i, 819 (1862); Joyce on *Injunctions* (1872). p. i, By the Judicature Act all the jurisdiction of the Court of Chancery was transferred to the High Court of Justice, and a somewhat larger jurisdiction to grant injunction was given to the latter by s. 25 (8) than that possessed by the former Court; Kerr, 1.

3. As to the form of a Writ of Injunction in Chancery, *see* Smith's Chancery Practice, i, 265, 266; Eden on Injunctions 367—387.

4. See, Langan and Handerson: *Civil Procedure* (3rd ed.) pp. 277—281; Halsbury's *Laws of England*, (4th ed.) vol 24 paras 1066, 1067, 1069.

5. *See* Civil Procedure Code, O. 39; Act 47 of 1963, s. 37. The former deals with the granting of injunctions by order, the latter, with the granting of injunction by decree at the hearing.

6. See Act 47 of 1963, s. 37.

7. Civ. Pr. Code. O. 39. See, *Kanhaiyalal* v. *Chironji Lal*, 1983 MPWN 328 (where the case does not fall within the scope Or. 39, r. 1(a). C.P.C. no injunction should be granted); *Narayanrao* v. *Vaman*, 1974 Mah. L J 620 (Or. 39, r.1, C. P. C. not exhaustive).

CENTRAL LIBRARY

and determined.[8] The sole object of an interlocutory injunction is to preserve the subject in controversy in its then condition, and without determining any questions of right merely to prevent the further perpetration of wrong, or the doing of any act whereby the right in controversy may be materially injured or endangered. Only such restraint will, therefore, be interposed as may suffice to stop the mischief complained of and preserve matters *in status quo*.[9] In granting such injunctions the Courts in no manner anticipate the ultimate determination of the questions of right involved. They merely recognise that a sufficient case has been made out to warrant the preservation of the property or rights in issue *in status quo*, until a hearing upon the merits, without expressing and indeed without having the means of forming a final opinion as to such rights. The Court upon an application for a temporary injunction will deal with the application upon the evidence before it and will confine itself strictly to the object sought and as far as possible abstain from prejudging the question in the cause.[10]

In order to sustain an injunction for the protection of property *pendente lite* it is not necessary to decide in favour of the plaintiff upon the merits, nor is it necessary that he should present such a case as will certainly entitle him to a decree upon the final hearing, since he may be entitled to a temporary injunction, although his right to the relief prayed may ultimately fail.[11] Nor is the decision of the Court in granting or refusing a preliminary Injunction conclusive upon either the Court or parties on the subsequent disposition of the cause by final decree.[12]

The Court will not, however, upon an application for such an Injunction shut its eyes to the question of the probability of the plaintiff ultimately establishing its demand, and will, before it disturbs a defendant in the exercise of a legal right, consider the probability of the plaintiff maintaining his right against the defendant.[13]

---

8. High, Inj., 5-6. *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 132, 145 (1876), *per* Green, J. [A temporary injunction, also referred to as an interlocutory injunction or preliminary injunction is a provisional remedy granted before a hearing on the merits to preserve the subjects in cortroversy in its then existing condition:—43 C.J.S. § 5. Where there is no doubt as to the legal rights, an interlocutory injunction will be granted.—Halsbury's *Laws of England* (4th ed.) vol. 24, para 953].

9. *Blakemore* v. *Glamorganshire, etc.*, 1 Myl. & K., 154, per Lord Brougham, High, Inj., 5-6.

10. High, Inj., 6; *Gopeenath Mookerjee* v. *Kally Dass Mullick*, 10 G., 225, 231 (1883); Kerr, Inj., 24; *Chandidat Jha* v. *Pudmanand Singh Bahadur*, 22 C., 459, 466 (1895). See. *Aftab Ahamad* v. *Bantul Fatma*, AIR 1968 Pat. 47 (After an interim injunction final hearing is to be concluded).

11. *Great Western Railway Co.* v. *Birmingham Ry. Co.*, 2 Ph., 597.

12. High, Inj., 6, citing *Andrae* v. *Redfield*, 12 Bletch., 407. (Amer.) See *Krishnaswamy* v. *South India Films Chamber of Commerce*, AIR 1969 Mad 42 (Governed by equitable principle).

13. *Clayton* v. *Attorney-General*, 1 Coopt. Cottenham, 97 : and see, *Attorney-General* v. *Mayor*, 5 D. G. M. G., 52. See, *Mir Barkat* v. *Zulfiquar*, AIR 1975 A.P. 187 (*Prima facie* case for temporary injunction is *sine qua non*).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Where the plaintiff applying for a Mareva injunction invites the court to include within the scope of the injunction assets which the defendant or a third party asserts belong to the third party, the court, may but is not obliged to, accept that assertion without further inquiry, depending on what is just and convenient. Where however, the court decides not to accept that assertion, it may order an issue to be tried between the plaintiff and the third party as to the ownership of the assets in advance of the main action or it may order the issue to await the outcome of the main action. There is no rule or principle that the plaintiff is to be deprived of the benefit of an injunction merely because a third party asserts a claim over part of the assets. Nevertheless, the court will always be astute to ensure that the rights of third parties are protected and, where it is asked by the plaintiff to include within the injunction assets which on their face belong to a third party, the court will only do so where there is good reason for supposing that the assets are in fact those of the defendant [*SCF Finance Co. Ltd.* v. *Masri*, (1985)2 All E.R. 747 (C.A.).].

In one case the defendant advertised his product in television in such a manner as to represent to the public that the same was the product of the plaintiff an application for injunction made by the plaintiff and also an order for discovery prior to the service of the pleading on the defendant. Question was whether discovery order was necessary for disposing fairly of the cause or matter it was held that the judge has jurisdiction to order discovery since the purpose of discovery sought was to preserve the plaintiff's property rights in their product so that any judgment in their favour in their claim that those rights were being damaged was not diminished by damage occurring in the meantime. Lack of pleading did not prevent the discovery from relating to 'matters in question in action'. However, apart from very exceptional circumstances, discovery ought not to be ordered if a plaintiff's sole object in seeking discovery before the full and proper pleading of his case in a statement of claim is merely to substantiate his suspicions and thereby assist him in obtaining interlocutory relief. [*RHM Foods Ltd.* v. *Bovril Ltd.*, (1982)1 All ER 673 (C.A.).]. In *Evans Marshall & Co. Ltd.* v. *Bertola S.A.*, (1973)1 All E. R. 992 (C.A.) the plaintiffs having sole agency right for distribution of first defendant's product in U.K. First defendents, a Spanish company in the agreement providing that law claims to be submitted to Bercelona Court. First, defendant terminating agreement and appointing second defendents as agents ; Second defendents, an English company ; plaintiff claiming injunction and damages against both defendants for breach of contract, interference with contract and conspiracy. Although the failure of the plaintiff to show that he had reasonable prospect of obtaining a permanent injunction at the trial was a factor which would normally weigh heavily against the grant of an interlocutory injunction, it was not a factor which, as a matter of law, precluded its grant. There were special cases in which it was proper to maintain a *status quo* irrespective of whether the relief granted at trial would include an injunction. On the evidence before the court the plaintiffs tried to establish a reasonable prima facie case which would lead to success ; if they were right, the disruption caused by the defendant's action was unjustified and so grave though damages would not be an adequate remedy.

CENTRAL LIBRARY

Accordingly, the plaintiff's appeal would be allowed and an interlocutory injunction granted.

The orders pronounced by English Courts upon applications for temporary injunctions have varied at different times. Under the former practice, as well as under the Civil Procedure Code, the form usually adopted was and is "until the hearing of the cause or until further order." Under the English procedure it is "until judgment in this action or until further order," in order to show that the Injunction is not to extend beyond it, unless then continued.[14] For an injunction, which has been granted upon an interlocutory application, is superseded by the judgment in the action. If it is intended that it should remain is force, it must be expressly continued.[15]

A temporary injunction may further come to an end before decree, where an application for its discharge has been made and granted under Order 39, rule, 4 of the Code.

If a suit is decreed, an injunction granted by the decree will of course subsist pending an appeal against that decree. But, if a suit is dismissed, an interlocutory injunction previously granted comes to an end.[16] The suit ceases to be a pending suit, and the Court which dismissed it ceases to have jurisdiction either to continue and maintain the injunction so previously granted, or to issue a fresh injunction in respect of the matter in suit.[17] If it is desired to obtain a temporary injunction pending the hearing of an appeal, an application for that purpose should be made to the Appellate Court.[18]

A temporary injunction may be granted, if in any suit it is proved by affidavit or otherwise (*a*) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (*b*) that the defendant threatens, or is about remove or dispose of his property with intent to defraud his creditors.[19] In such cases the Court may by order grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order.[20]

Further, in any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the

---

14. Set., 173; Kerr, 663.
15. Kerr, 680.
16. *Kalyanbhai Dipchand* v. *Ghanasham Lal Jadunathji*, 5 B., 29, 31 (1880) and cases cited in the next note.
17. *Yamin-ud-Dowlah* v. *Ahmad Ali Khan*, 21 C. 561 (1894) ; *Shaikh Moheeooddeen* v. *Shaikh Ahmed Hossein*, 14 W. R., 384 (1870) ; *Gossain Money Puree* v. *Gour Pershad Singh*, 11 C., 146 (1884); *cf. Ram Chand* v. *Pitam Mal*, 10 A., 506, 512 (1888). See *Madho Prasad* v. *Draupadi*, 43 A., 383 (1921).
18. *Shaikh Moheeooddeen* v. *Shaikh Ahmed Hossein*, supra, 385; *Gossain Money Puree* v. *Gour Pershad Singh*, supra, at p. 149 ; *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80 (1887); *Kanahi Ram* v. *Biddya Ram*, 1 A., 549, 551 note (1878).
19. *Lloyd's Bank* v. *Medway Navigation Co.*, 2 K. B., 359 (1905).
20. *See* Civ. Pr. Code, O. 39.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.[21]

The Supreme Court* has held that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of O. 39, C.P.C. There is no such expression in s. 94, C.P.C. which expressly prohibits the issue of a temporary injunction.

In *Gangubai* v. *Sitaram* (AIR. 1983 SC 742), interim injunctions were granted by the Supreme Court restraining the respondents from interfering with possession of the land by the appellants and from putting up construction for the whole land including the land on which the appellants claimed title. It was held in that case that when an interim injunction is sought, the court may have to examine whether the party seeking the assistance of the court was at any time in lawful possession of the property and if it is so established one would *prima facie* ask the other side contesting the suit to show how the plaintiffs were dispossessed. In the present case the injunction restraining interference with the possession of the land cannot be refused. If the respondents are allowed to put up construction for the whole of the land including the land involved in dispute, the situation may become irreversible by the time the dispute is decided and would preclude fair and just decision of the matter. If, on the contrary, injunction is granted as prayed for, the respondents are not likely to be inconvenienced because they are in possession of sufficient land on which they can put up construction. Therefore, the interim injunction must be granted.

(ii) Perpetual.—A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit. It is in effect a decree of the Court. The defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff.[22] As is indicated by its name, a perpetual injunction is unlimited in duration. It is in effect a decree and concludes a right and in the matter of procedure is regulated by the law relating to decrees, and in the matter of its grant by the provisions of the Specific Relief Act.

Subject to the other provisions contained in, or referred to by Chapter VIII of the Specific Relief Act, a perpetual injunction may be granted to pre-

---

21. *See* Civ. Pr. Code, O. 39.

* *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527.

22. *See* Act 47 of 1963, s. 37. [A perpetual injunction is based on a final determination of the rights of the parties, and is intended permanently to prevent infringement of those rights and obviate the necessity of bringing action after action in respect of every such infringement.—Halsbury's *Laws of England*, (4th ed.) Vol. 24, para 903. A permanent or perpetual injunction is one granted by the judgement which finally disposes of the injunction suit—43 C.J.S. § 6].

CENTRAL LIBRARY

vent the breach of an obligation existisg in favour of the applicant, whether expressly or by implication. When such obligation arises from contract, the Court will be guided by the rules and provisions contained in Chapter II of that Act relating to specific performance. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property,[23] the Court may grant a perpetual Injunction in the following cases (namely) :—(*a*) where the defendant is trustee of the property for the plaintiff; (*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused by the invasion; (*c*) where the invasion is such that pecuniary compensation would not afford adequate relief; (*d*) where it is probable that pecuniary compensation cannot be got for the invasion; (*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.[24]

Thus (*a*) *A* lets certain land to *B*, and *B* contracts not to dig sand or gravel thereout. *A* may sue for an injunction to restrain *B* from digging in violation of his contract. (*b*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier *B*. The latter may sue for an injunction restraining *A* from making the noise.[25]

In a suit filed by the Digambari Jain against the Swetambari Jain in respect of the rights claimed by the Digambaris in 3 temples in the Patna District of Bihar, a decree was passed *inter alia* "and further entitled to a perpetual injunction to the effect that no adorned image should ever be permanently installed within the Jalmandir temple." In an execution application of the said decree question arose as to the interpretation of the decree. A perpetual injunction by the terms of the decree did not mean that they were restrained from temporarily installing the adorned image. If such temporary installation in fact interfered with the right of worship of the plaintiffs, of the Digambari sect of Jains, their remedy was by a separate suit and not by invoking an injunction which had no application to the circumstances of the case [*Dhanu Lal Suchanti* v. *Seth Hukum Chand*, 63 IA. 93 : AIR. 1936 P.C. 44].

(iii) Mandatory.—Injunctions are further distinguishable according as they are framed to prevent or to compel the performance of an act. When an order is framed to compel the performance of a positive act, it is called a mandatory injunction.[26] By the Specific Relief Act the Courts are expressly given power to grant injunctions to do substantive acts when such injunctions are necessary to prevent the breach of an obligation. That Act provides that when to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its

---

23. For the purpose of this section a trade-mark is property. *See* Act 47 of 1963, s. 38.

24. *See* Act 47 of 1963, s. 38.

25. *See. ills* (*a*) and (*b*) of the old Act I of 1877, s. 54. See also the numerous other illustrations appended to s. 54 of the (old) Specific Relief Act.

26. *See* Kerr, 40; High, Inj., 3; Halsbury's *Laws of England* (4th ed.), vol. 24, Paras 901,902. [A mandatory injunction is an extraordinary remedial Procedure which commands the performance of some positive act—43 C.J.S. § 8].

CENTRAL LIBRARY

discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. In England the same thing is partially effected by the indirect method of making orders, called mandatory injunctions, to refrain from leaving a thing undone.[27]

Thus (*a*) *A*, by new buildings, obstructs light to access and use of which *B* has acquired a right under the Indian Limitation Act. *B* may obtain an injunction not only to restrain *A* from going on with the buildings, but also to pull down so much of them as obstructs *B*'s light[28] (*b*) *A* builds a house with eaves projecting over *B*'s land. *B* may sue for an injunction to pull down so much of the caves as project.[29] (*c*) In the case put as illustration (*i*) to section 54 of the (old) Specific Relief Act,[30] the Court may also order all written communications made by *B*, a patient, to *A* as medical adviser, to be destroyed. (*d*) In the case put as illustration (*y*) to section 54 of the (old) Specific Relief Act,[31] the Court may also order *A's* letters to be destroyed. (*e*) *A* threatens to publish statement concerning *B* which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to *B's* property. (*f*) *A* being *B*'s medical adviser threatens to publish *B*'s written communications with him, showing that *B* has led an immoral life. *B* may obtain an injunction to restrain the publication. (g) In the cases put as illustrations (*v*) and (*w*) to section 54 of the (old) Specific Relief Act[32] and as illustrations (*e*) and (*f*) *ante*, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.[33]

A mandatory injunction may be either temporary or perpetual.[34] A mandatory Injunction is, however, seldom granted before the hearing, though when the case is clear and free from doubt it may be had upon interlocutory

---

27. Act 47 of 1963, s. 39. See *Lane* v. *Newdigate*, 10 Ves., 192. Halsbury's *Laws of England* (4th ed.) Vol. 24, Para 947.

28. See *Kandaswami* v. *Subramania*, 41 M., 208 (1917).

29. *See* as to wall erected on footings, of plaintiff's wall ; *Abdul Hussain* v. *Ram Charan*, 38 C., 687 (1911); 16 C. W. N., 313.

30. *A* is *B's* medical adviser. He demands money of *B* which *B* declines to pay. *A* then threatens to make known the effect of *B's* communications to him as a patient. This is contrary to *A's* duty, and *B* may sue for an Injunction to restrain him from so doing.

31. *A*, a very eminent man, writes letters on family topics to *B*. After the death of *A* and *B*, *C*, who is *B's* residuary legatee, purposes to make money by publishing *A's* letters. *D*, who is *A's* executor, has a property in the letters and may sue for an Injunction to restrain *C* from publishing them.

32. *A* pirates *B's* copyright. B may obtain an Injunction to restrain the piracy, unless the work, of which copyright is claimed, is libellous or obscene. *A* improperly uses the trade-mark of *B*; *B* may obtain an Injunction to restrain the user, provided that *B's* use of the trade-mark is honest.

33. *See* Act 47 of 1963. s. 39.

34. Kerr, 44; High on Injunctions, 3; Eden's Injunctions, 330, 331; *Gale* v. *Abbott*. 8 Jur., N. S., 987 ; *Johnston* v. *Courts of Justice Chambers*, W. N. (1883), 5.

CENTRAL LIBRARY

application.[35] When a mandatory injunction is asked for, the plaintiff need not apply for an interlocutory injunction before the hearing.[36] A doubt has been expressed[37] whether a mandatory injunction can be considered a "temporary" injunction under O. XXXIX, rule 2 of the Code of Civil Procedure as amended by Act 104 of 1976 and whether the Courts in India have any right to assume that in this respect they are on the same footing as the Courts in England and have the power and a discretion to issue mandatory injunctions upon interlocutory applications. It was, however, not necessary in this case to decide the point and the other learned judge [38] who heard the suit expressed himself as being rather in favour of the jurisdiction saying "I am not sure that the Indian Courts have not similar powers." It has since been expressly held that Indian Courts may issue temporary injunctions in a mandatory form.[39] Where, however, compliance with a mandatory injunction was likely to expose a person to *habeas corpus* proceedings in England an order was refused.[40]

It was held in *Astro Exito Navegacion S.A.* v. *Southland Enterprise Co. Ltd.*, (1982)3 All E.R. 335 (C.A.) that the court has jurisdiction where it appeared just and convenient to grant interim relief by way of interlocutory mandatory injunction to enfoce a contractual obligation.

In *Redland Brieks Ltd.* v. *Morris*, (1969)2 All E.R. 576 (H.L.) an adjoining landowner dug his land for clay thereby causing lands of the adjoining owner to slip and grave damage occurred and there was possibility of further damage in future. Injunction was granted in general terms and not specific details of work to be done. The injunction required defendant to take all necessary steps to restore the support to the plaintiff's land. The principles on which mandatory injunction to be granted were stated as follows :

"I should like to observe, in the first place, that I think a mandatory injunction, except in very exceptional circumstances ought to be granted in such terms that the person against whom it is granted ought to know what he is to do". (page 580). Where there were disputes between the Local authority and its employees, maintenance of tenants' heating system failed. In such a situation the question arises whether it was appropriate for court to grant injunc-

---

35. *Ib.*, *Robinson*, v. *Byron*, I Bro. C. C., 588: *Hervey* v. *Smith*. 1. K. & J., 392; *Attorney-General* v. *Metropolitan Board of Works*, 1 H & M., 312; *Bonner* v. *Great Western Railway Co.*, 24 Ch. D., 10. The Court will moreover never flinch from ordering work to be undone, if it has been forced on pending an appeal or pending a motion for an Injunction. *Wimbledon Local Board* v. *Croydon Rural Sanitary Authority*, 32 Ch. D 428, 429. A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. If the case is clear and one which the Court thinks ought to be decided at once or if the act done is a simple and summary one which can be easily remedied, the court will grant mandatory injunction on an interlocutory application.—Halsbury's *Laws of England* (4th ed.) vol. 24, Para 948.

36. *Gale* v. *Abbott*. 8 Jur., N. S., 987.

37. *Rasul Karim* v. *Perubhai Amirbhai*, 38 B., 381 (1914). Per Beaman, J.

38. *Per* Shah, J.

39. *Kandasvami* v. *Subramania*, 41 M., 298 (1917).

40. *Besant* v. *Narayaniah*, 38 M., 807 (1914). 41 I. A., 314.

CENTRAL LIBRARY

tion requiring the Local authority to restore heating. It was held that although a mandatory injunction in the form of an order for specific performance was an appropriate remedy for breach of a landlord's repairing covenant, it was only in very rare circumstances that the court would issue such an injunction at the interlocutory stage of proceedings. Furthermore, it is only in the most extreme circumstances that such an order would be made when industrial action and negotiations were involved. However, the circumstances were exceptional and the fresh medical evidence entitled the court to exercise its discretion, and in the circumstances the real risk to the health of the tenants meant that the balance of convenience favoured the granting of an injunction, even though there was a threat of increased industrial action. The court would, therefore, order an inspection of the boiler installations with a view to an injunction being granted— *Parker* v. *Camden LBC*, (1985)2 All E.R. 141 (C.A.).

The requirement that there had to be proof of imminent danger before a mandatory injunction could be granted meant that the court had to be satisfied that the circumstances were such that the remedy was not being granted prematurely. On the evidence the grant of injunction would not have been premature for there was nothing to indicate that there was any other step that would avoid the proven probability of damages to the plaintiff's house other than by way of relief sought. It followed that the judge was entitled to award damages in lieu of a mandatory injunction and the appeal dismissed. [*Hooper* v. *Rogers* (1974)3 All E.R. 417 (C.A.)].

14. Origin of the equitable relief by Injunction.—The jurisdiction of equity to decree Injunctions, as well as specific performance, arose owing to the fact that the Courts of Common Law could afford no remedy at all or such remedy as they could afford was imperfect or inadequate. The Common Law Courts had, indeed, in certain cases, the power of prohibiting the committal of wrongs; so waste could be restrained by the writ of prohibition and estrepment of waste. But the cases in which that law supplied remedies of this nature were very few, and the procedure by which they were applied was cumbrous and inconvenient, so that the assistance of equity was at an early period found necessary for the proper administration of justice; and when this jurisdiction was established the superiority of its process gradually caused the inferior remedies of law to fall into desuetude.[41]

15. Subject-matter of Injunctions.—An injunction is a form of relief granted in a pending suit in respect of the actual or threatened infringement or invasion of some *legal right*, that is, some right recognised by and capable of being enforced at law, where under the circumstances of the case and upon the principles which govern the issue of Injunctions, this form of relief is the appropriate remedy for such invasion or infringement. An injunction will not be granted to parties who have no legal right whatever. For it is in its nature a just and convenient remedy granted for the purpose of protecting or asserting

---

41. Story's Eq. Jur., §§ 714, 864; Smith's Principles of Equity, 690. Spencer's Equitable Jurisdiction, i, 668. Eden's Injunctions, 159; Halsbury's *Laws of England* (4th ed.) vol. 24, Para 910.

GS28,900

CENTRAL LIBRARY

the legal rights of the parties, that is, for the defence or enforcement of rights which are capable of being enforced at law or in equity.[42] It must be shown that the opposite party has done something towards infringing the plaintiff's rights or it is so clear that he is on the point of doing something which will infringe the plaintiff's rights so that there is a prospect of irremediable injury being suffered by the plaintiff unless he takes steps to stop the defendant's action.[43] The granting of injunctions is not limited to cases in which there is actual or prospective injury to *property*. Thus, the publication of a libel,[44] the making of slanderous statements[45] and injury to personal *status* may be restrained.[46] But where the subject-matter of an injunction is property, the latter should, when granted, be strictly confined to the property in suit ;[47] as of course in other cases to the restraint of the particular act or acts complained of, though when a plaintiff alleges and proves a peculiar and specific injury, the order which he obtains gives him an extended right in general terms to restrain any injury of the same kind.[48] Equity will not interfere for purposes of punishment only, nor will it lend its aid by injunction for the enforcement of right or the prevention of wrong in the abstract, and unconnected with any injury or damage to the person seeking the relief;[49] nor will the Court interfere by Injunction in matters merely criminal or immoral, which do not affect any right to property ;[50] nor will the Court interfere in political matters or with the public duties of departments of government or the sovereign acts of foreign governments.[51] It must be established that the injunction is required to prevent the breach of an obligation as defined in s. 2(a) of the Specific Relief Act, 1963.[52]

The subject-matter of injunctions is generally set forth in the Code and Specific Relief Act. The cases in which temporary injunctions may be granted under the Code are those in which there is danger of waste, damage, alienation or wrongful sale in execution of a decree of property in suit to which the

---

42. *North London Railway Co.* v. *Great Northern Railway Co.*, 11 Q.B.D., 38, 39 ; Kerr, Inj., 24 ; and *see* Snell, Eq., 578.

43. *Govindalal* v. *Ichha Vagha*, 22 Bom. L. R., 723 (1919). *Ramjas* v. *Brajamohan*, 19 C. W. N., 887 (1914), 20 C. L. J., 538.

44. *Quartz Hill, etc., Mining Co.* v. *Ball*, 20 Ch. D., 501; *Thomas* v. *Williams*, 14 Ch. D., 864 ; this was not so in England prior to the Judicature Act, 1873 (*Prudential Assurance Co.*, v. *Nnott*, 10 Ch., 142), or in India prior to the passing of the Specific Relief Act, *Shepherd* v. *The Trustees of the Port of Bombay*, I B., 132 (1876). *See* Kerr, Inj., 6, 493.

45. *Loog* v. *Bean*, 26 Ch. D. 306 ; *Hayward* v. *Hayward*, 34 Ch. D., 204.

46. *Aslam* v. *Mayor, etc., of Southampton*, 16 Ch. D., 148, but *see* also *Millican* v. *Sullivan*, 4 Times R., 204.

47. See *post.*

48. *See* Joyce's Doctrines, 58.

49. *See* High, Inj., 3.

50. *See* post.

51. Joyce's Doctrines, 4; Kerr, Inj., 7; as to political matters, *see Emperor of Austria* v. *Day*, 3 DeG. F. & J., 217; *United States* v. *Prioleau*, 2 H. & M., 559.

52. *Ram Kisen* v. *Poorman*, 31 C. L. J., 259 (1920); *Bhudev* v. *Kalachand*, 34 C. L. J., 315 (1923).

CENTRAL LIBRARY

plaintiff has a *prima facie* legal claim, a threatened removal or disposition by a defendant of his own property with intent to defraud and to defeat the rights of his creditors, and a threatened breach of contract or a threatened committal of some other injury by the defendant to the legal right of the plaintiff. And a perpetual injunction may be granted, subject to the other provisions contained in, or referred to by, Chapter VIII of the Specific Relief Act, 1963 to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The term "obligation" here includes all such duties, but only as are enforceable by law. It must therefore be shown. in the first place, that there is a legal right, and that there is an injury, either actual or prospective, to that right. The subject-matter of the suit must not be illegal. So where more than twenty artizans signed an agreement whereby they constituted themselves an association for a particular purpose, but which association was not registered, it was *held* that the Court could not grant an Injunction to restrain the breach of such agreement.[53]

16. Its classification.—The occasions upon which the assistance of the Courts by way of injunction may be invoked in aid of legal rights may be more particularly classified as follows :—injunctions (A) in respect of judicial proceedings, being either actions or proceedings in execution of decrees made therein, and either of which may be pending or non-pending at the date of application : (B) in respect of acts not being judicial proceedings, which second division may be sub-divided into injunctions in the case of obligations arising (*i*) from contract, (*ii*) from trust, (*iii*) in tort, such as injuries to the persons, to property or to private franchises in the nature of property.

But as the abovementioned matters are those in respect of which an injunction may generally be granted, so also in the case of each there exists certain statutory restrictions withdrawing particular cases from the operation of this form of relief.

An injunction will be refused (*a*) on grounds which are based on the *character and conduct of the applicant*, *viz.*, if the applicant have no personal interest in the matter,[54] or his conduct or that of his agents has been such as to disentitle him to the assistance of the Court,[55] or if he has acquiesced in the continuing breach complained of ;[56] (*b*) on grounds which are based in a consideration of the *relief applicable*, that is, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust ;[57] and (*c*) an Injunction will be refused in certain *particular cases*.

Thus an injunction cannot be granted in respect of class (A)—(*a*) to stay proceedings in any *criminal* matter ; (*b*) to stay *civil* proceedings in a Court not subordinate to that from which the injunction is sought (*c*) to stay

---

53. *Bhikaji* v. *Sabaji Bapu Saju*, 1 B., 550 (1877).
54. *See* Act 47 of 1963, s. 41 cl. (j).
55. *Ib.*, cl. (i).
56. *Ib.*, cl. (g).
57. *Ibid.* cl. (h).

CENTRAL LIBRARY

a civil judicial proceeding *pending* at the institution of the suit, in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings.[58] And an injunction cannot be granted in respect of class (B) *viz.*, (*a*) in contract, to prevent the breach of a contract, the performance of which would not be specifically enforced ;[59] provided that where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, does not preclude it from granting an injunction to perform the negative agreement ; provided further that the applicant has not failed to perform the contract so far as it is binding on him ;[60] (*b*) in case of tort, to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance.[61] (*c*) The Court will not interfere to restrain persons from applying to any legislataive body,[62] whether of this or of a foreign country. This jurisdiction has been asserted to exist in England, but it is difficult to conceive a case in which such an injunction would be granted.[63] (*d*) Lastly, the courts will not by Injunction interfere with (*i*) the public duties of any department of the Government[64] of India or the local government, or (*ii*) with the sovereign acts[65] of a foreign government.[66]

The limits within which a Court of Equity interferes with the acts of public functionaries or bodies are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by the law, the Court will not interfere. The Court will not interfere to see whether any alteration or regulation, which they may have directed, is good or bad ;[67] but if they are departing from that power which the law has vested in them—if they are assuming to themselves a power over property which the law did not give them—the Court no longer considers them as acting under the authority of that law, but treats them, whether they be a corporation or individuals, merely as persons dealing with pro-

---

58. *Ib.*, cls. (a), (b), (a). See, *Metal Corpn.* v. *A. S. Subbaiyer*; 53 C.W.N, 398; *Manohar Lal* v. *Seth Hiralal*, A.I.R. 1962 S.C. 527 (Injunction in exercise of inherent jurisdiction of Court).

59. *Ib. cl.* (e).

60. *See* Act 47 of 1963, s. 42.

61. See Act 47 of 1963. s. 41 & cl. (f).

62. *Ib.*, cl. (c). As to the Legislative Council, see *Kumar Sankar Roy* v. *Cotton*, 40 C. L. J., 515 (1924); *Bhupendranath* v. *Rangit Singh*, 46 C., 384 (1913).

63. Kerr, Inj., 12; Joyce's Doctrines, 23; Joyce's Inj., 804, and cases there cited. In America the jurisdiction is not recognised. High, Inj., 26.

64. *Ellis* v. *Grey*, 6 Sim., 214.

65. *Gladstone Ottoman Bank*, 1 H. & M., 505; 9 Jur., N.S., 246.

66. See as to contracts, etc., of foreign Governments : *Smith* v. *Weguelin*, L. R., 8 Eq., 198; 17 W. R., 924: *Twycross* v. *Dreyfuss*, 5 Ch. D., 605; *Lariviere* v. *Morgan*, 7 Ch., 550; *Morgan* v. *Lariviere*, 7 H. L., 423, 430, and removal of property; *Vavasour* v. *Kemp*, 9 Ch. D., 351; *Foreign Bond-holder* v. *Pastor*, 23 W. R., 109 (Eng.); Joyce's Doctrines, 37.

67. *Surat City Municipality* v. *Chunilal Maneklal Ghandi* (1906), 30 B., 409; *Chunilal Maneklal* v. *Khirpashankar Bhagranji* (1906), 31 B., 37; and see *Sabhapati Singh* v. *Abdul Gaffur*, 24 C., 107 (1896) ; and *Cullen* v. *Browne*, 2 Stark., 577.

CENTRAL LIBRARY

perty without legal authority.[68] and although the Court will not interfere with any public duty which a public *quasi* corporation aggregate (as for instance, the Lords of the Treasury) have to discharge, or with any discretion which they have to exercise, in their public capacity, yet it will restrain them from doing a mere ministerial act—such as the payment of compensation-money awarded for the abolition of an office, with a view to secure the money for the parties who may be deemed to be entitled to it.[69] And a suit for an injunction against the Government is governed by the rule requiring notice under section 80 of the Civil Procedure Code.[70] It has however been held that whatever may be the case of a suit against the Secretary of State a suit for an Injunction brought against a public officer (*e.g.*, the official assignee) to restrain him from doing an act as such officer can be brought without such notice.[71] Though no injunction may thus issue, yet the law has provided in certain cases a remedy for the breach of a public duty. The enforcement of public duty was formerly the object of the Common Law or prerogative writ of mandamus, and though neither the High Court nor any Judge thereof may issue such a writ yet the Constitution of India gives to the High Courts powers similar to those hitherto exercisable by this writ, enabling them to require specific acts to be done or forborne within the local limits of their ordinary original civil jurisdiction only.[72] And a public officer acting in his individual capacity is liable to a suit or Injunction as a private person and is not entitled to notice under section 80 of the Code of Civil Procedure.[73] Where a statute provides a particular remedy for the infringement of a right of property jurisdiction by Injunction is not excluded unless the statute so provides.[74]

Difference between stay order and order of injunction.—In effect a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. It is also well settled that the injunction order not being addressed to the court if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order, it is bound to obey it and if it does not, it acts illegally, and all proceedings after the knowledge of the order would be a nullity.*

---

68. *Frewen* v. *Lewis*, 4 My. & Cr., 249, 254; 9 Sim., 66; Joyce's Doctrines 24, 25.

69. *Ellis* v. *Grey*, 6 Sim., 214; see Joyce's Doctrines, 299, 301.

70. *Secretary of State for India* v. *Gajanan Krishnarao Mavlankar* (1911), 35 B., 362; and see *Secretary of State for India* v. *Rajlucki Debi* (1897), 25 C., 239; and *Flower's Case* (1877), 5 Ch. D., 347.

71. *Naginlal Chunilal* v. *The Official Assignee, Bombay*, 37 B., 243 (1912).

72. See Art. 226.

73. *Ganoda Sundary Chaudhurani* v. *Nalini Ranjan Raha*, 36 C., (1909) 29.

74. Kerr, 6th Ed., 9; and cases there cited.

* *Mulraj* v. *Murti Raghunathji*, A.I.R. 1967 S.C. 1386.

CENTRAL LIBRARY

In England an injunction is granted against a body performing public duties in a case where the plaintiff can establish a *prima facie* case and has shown that there is a serious case to be tried [*Smith* v. *Inner London Education Authority*, (1978)1 AII E.R. 411 (C.A.)] The Supreme Court of India in *Union of India* v. *Oswal Woollen Mills Ltd.*, (1984)2 S.C.C. 646 has held that interim injunction should not be passed against public officials acting in discharge of public duty. But where statutory remedies are entirely ill suited to meet the demands of extraordinary situations and the vindications of public justice require it, then injunction should be granted in exercise of writ jurisdiction against public authority. (See, *Assistant Collector of Central Excise* v. *Dunlop India Ltd.*, AIR 1985 S.C. 330). In *Preeti Singh Roy* v. *Calcutta Tramways Co. (1978) Ltd.*, (AIR. 1986 Cal. 305) it has been held that the balance of convenience is the pre-eminent consideration in granting injunction against public authority. In *State* v. *Ganeshjew Mahapravu* (AIR 1986 Ori 134) it has been held that injunction cannot be granted against the Government without service of notice to the State.

17. Parties.—The general principles deducible from the authorities as to the joinder of parties, complainant and defendant in Courts of Equity apply to the case of an injunction and by these principles the Court is guided in determining whether proper parties have been brought before it for or ;against whom relief by injunction is asked.[75]

(i) In whose favour an Injunction will be granted.—By the provisions, however, of Order I, rule 9 of the Civil Procedure Code, no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.[76] An injunction will only be issued in favour of the person or persons, whose legal right has been infringed. An injunction cannot be granted if the applicant have no personal interest in the matter even though he may have been made a party to the action.[77] The jurisdiction will be exercised only on behalf of parties having a legal right, and interested in the transaction or subject-matter of the proceedings which it is sought to enjoin. Nor will the Court interpose by injunction for the protection of one who seeks relief indirectly through the equities of other parties on which they themselves do not insist.[78] The simplest and most generally accepted test in determining whether a person is a proper party plaintiff to an ac-

---

75. High Inj., s. 1547. See Halsbury's *Laws of England* (4th ed.), vol. 24, paras 1041—1045.

76. Provided that nothing in this rule shall apply to non-joinder of a necessary party (Inserted by Act 104 of 1976).

77. Act 47 of 1963, s.41, cl. (j) ; *Wynne* v. *Newborough*, 1 Ves., 164 ; *Hunter* v. *Nockolds*. 15 L. J., Ch., 320; *Leake* v. *Beckett*, 1 Y. & J. 339. See for American law 43A C.J.S. § 183 (In order to have standing to sue a litigant must have a personal interest in the outcome of the controversy.)

78. *Roberts* v. *Bozon*, 3 L. J., Ch., 113, as to relief in favour of defendant in suit by plaintiff for partition, see *Durga Nath Pramanik* v. *Chintamoni Dassi*, 31 C., 214, 221 (1903).

CENTRAL LIBRARY

tion for an injunction is whether he possesses a legal or equitable interest in the subject-matter of the controversy.[79] This legal right may be inherent either in some particular individual alone, or it may be common to an individual along with a number of other persons, whose interest is identical in a juridical point of view, or the act complained of may affect the public at large. In the first case, the individual whose right is infringed alone can sue. Where there are several persons in whom the right to relief claimed is alleged to exist jointly, severally or in the alternative, in respect of the same cause of action, they may all be joined as plaintiffs.[80] Where there are numerous parties, that is to say, parties capable of being ascertained,[81] having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit on behalf of all parties so interested.[82] Order I, rule 8, of the Civil Procedure Code is designed to allow one or more persons to represent a class having special interests rather than to allow such persons to sue on behalf of the general public.[83] In England and America when the right involved is purely of a public nature, and the grievance, which it is sought to enjoin,is one which affects the public at large, proceedings are usually instituted by the Attorney-General on behalf of the Crown or people. This is commonly done in the case of public nuisances.[84] In India, the Civil Procedure Code permits the Advocate-General, or two or more persons who have obtained his consent in writing, to institute a suit in the case of public nuisance. And the Code also permits, in the case of suits relating to public charities, either the Advocate-General or two or more persons having an interest in the trust, and having obtained his consent in writing, to sue to enforce the interests of the public at large in the subject-matter of the suit.[85] When relief by injunction is sought for the protection of the rights of churches, religious bodies, and the like, the action is usually brought in the name of the trustees.[86]

(ii) Against whom an Injunction may be granted.—The person against whom an injunction is sought must not only be a person against whom the claim of the plaintiffs in fact rightly laid in respect of the act complained of, but also a person within the reach of the Court or amenable to its jurisdiction and bearing such a character as shall render him personally so amenable.[87] An

---

79. High, Inj., s. 1556.

80. *See* Civ. Pr. Code, O. 1, r.1 as amended by Act 104 of 1976.

81. *Sajedur Raja* v. *Baidyanath De*, 20 C., 397 (1892).

82. Civ. Pr. Code, *O.* 1, *r.* 8 as amended by Act 104 of 1976. See as to suits for an Injunction, *Kalidas Jivram* v. *Gor Porjaram Hirji*, 15 B., 309 (1890) ; *Anandrav Bhikaji* v. *Shankar Daji Charya*, 7 B., 324 (1883) ; *Mozley* v. *Alston*, 1 Ph., 790; *Navroji Manekji Wadia* v. *Dastur Kharsidji Mancherji*, 28 B., 20 (1903).

83. *Adamson* v. *Arumugum*, 9 M., 463(1886).

84. High Inj., s. 1554, See, Halsbury's *Laws of England* (4th ed.), Vot 24, paras 1081, 1042 ; 43 C.J.S. § 26.

85. Civ. Pr. Code, ss. 91, 92. as amended by Act 104 of 1976. As to private trusts, see *Brojomohun Doss* v. *Hurrololl Doss*, 5 C., 700 (1880).

86. See *Augustine* v. *Medlycott*, 15 M. 241 (1892); for a suit by a temple committee. See *Ponduranga* v. *Nagappa*, 12 M 366 (1889).

87. As to the persons who may be joined as defendants. See Civ. Pr. Code, *O.* 1, *rr.* 3—8 as amended by Act 104 of 1976. Halsbury's *Laws of England* (4th e. d.) vol. 24, para 1044 ; 43A CJS § 184.

CENTRAL LIBRARY

injunction will not in general be granted against any one who is not a party to the action.[88] The cases cited as exceptions to, hardly infringe upon, this general rule. Thus the attorneys, agents, servants, and workmen of the party enjoined may also be enjoined although the plaint and notice of motion may only ask for an injunction against the defendant.[89] But in such a case the acts of the agents and servants are, in law, the acts of the defendant himself. Again, the purchaser under a decree will be restrained from acting contrary thereto, although not a party to the action;[90] for the purchaser by his act of purchase submits himself to the jurisdiction of the Court as to all matters connected with that character. So also it has been held that a tenant holding under a Receiver will be restrained on motion, though not a party to the action.[91] For as the tenant has entered into an agreement with the Court itself by means of the Receiver, it is not necessary that an action should be filed against him.

In so far as an injunction is in its nature a remedy against an individual, it will be issued only in respect of acts done by him against whom it is sought to be enforced. Thus an injunction cannot be obtained against executors on account of acts done by their testator. They may be sued for an injunction in respect of a wrong done by themselves, but they cannot be so sued in a representative character.[92] And for the same reason, namely, that an injunction is an order directed to a person, it does not run with the land.[93] By reason of this same operation *in personam*, the Court may exercise jurisdiction quite independently of the act to be done, provided the defendant be within the reach and amenable to the process of the Court.[94] An action may be brought to restrain a party who claims a right to do a thing, even though he says he has no present intention to do it.[95] And the parting by a defendant with his interest after the bringing of the action does not disentitle the plaintiff to an injunction.[96] But a man who has assigned or disposed of his interest in the subject-matter should not be made a party to the action.[1] No suit, however, shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy, so far as regards the rights and interests of the parties actually

---

88. Eden, Inj., 320; Drewry, Inj., 346, 369, 370; Kerr, Inj. 632; Joyce's Inj., 1259; High, Inj., § 1548; *Iveson* v. *Harris*, 7 Ves., 256; *Brown* v. *Frost*, Sug. V. & P., 229*n*; *Dawson* v. *Princeps*, 2 Anst., 521.

89. *Humphreys* v. *Roberts*, 1 Set., 173; Kerr, Inj., 632; but the Injunction will not be extended to his tenants; *Hodson* v. *Coppard*, 29 Beav., 4.

90. *Casamajor* v. *Strode*, 1 Sim. & St. 381.

91. *Walton* v. *Johnson*, 15 Sim., 352.

92. *Kirk* v. *Todd*, 21 Ch. D., 487.

93. *Att.-Genl.* v. *Birmingham, etc., Drainage Board*, 50 L. J., Ch., 786; W. N. (1881), 83; *Bhaishankar Nanabhai* v. *Morarji Keshavji* (1911), 36 B., 283; *Dayabhai* v. *Bapilal* (1901), 26 B., 140; and *Jamsetji Manekji Kotwal* v. *Hari Dayal* (1907), 32 B. 181.

94. v. *post*.

95. *Hext* v. *Gill*, 7 Ch. App., 699; *Shafto* v. *Bolckow & Co.*, 35 W R. (Eng.), 562.

96. *Bird* v. *Lake*, 1 H. & M., 121.

1. *Hawkins* v. *Gardiner*, 1 W. R. (Eng). 345; *Clements v. Welles*, 1 Eq., 200; cf. *Evans* v. *Davies*, 10 Ch. D., 747.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

before it.[2] When there is a case for an injunction, and the injunction will operate for the benefit of parties not before the Court the absence of those parties will not prevent the Court from interfering. It is enough that the property sought to be protected is really in danger.[3] In cases of injunction the Court frequently acts for parties in their absence.[4] But where the injunction would have the effect of injuring materially the rights of those persons who are not before the Court, the latter will not ordinarily and without special necessity interfere.[5] An injunction directed to a Corporation or public Company is binding not only on the corporation or company itself, but also on all members and officers of the corporation or company whose personal action it seeks to restrain,[6] and may be enforced by the attachment of the property of the corporation, or with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention, and also by performance of an enjoined act by some one appointed by the Court.[7] A municipal corporation as such cannot be held guilty of contempt in violating an injunction, but only the persons or officers who have disobeyed the writ.[8]

18. Essentials to the grant of relief by way of Injunction.—The jurisdiction of the Civil Courts in this country to grant relief by injunction is given by the Specific Relief Act[9] (47 of 1963), and the jurisdiction to appoint Receivers by the Civil Procedure Code.[10] Certain common conditions are necessary to the existence of jurisdiction to grant either of these forms of relief.

(i) Relief cannot be granted merely to enforce a penal law.—In the first place, specific relief, whether given by the issue of an injunction or the appointment of a Receiver, cannot be granted for the mere purpose of enforcing a penal law[11] —that is, such enforcement must not be the *sole* object of requiring specific relief, but the real object must be the protection of some civil right or the prevention of a tort or civil wrong. Nor can an injunction be granted to stay proceedings in any criminal matter.[12] "The Court has no

---

2. Civ. Pr. Code, *O.* 1, r. 9 as amended by Act 104 of 1976; This does not apply to non-joinder.

3. *Const.* v. *Harris*, T. & R., 514; *Evans* v. *Coventry*, 5 D. M. & G., 911; *Hamp* v. *Robinson*, 3 D. J. & S., 109.

4. *Const.* v. *Harris*, supra; *Evans* v. *Coventry*, supra.

5. *Hartlepool Gas & Water Co.* v. *West Hartlepool Harbour and Railway Co.*, 12 L. T. N. S., 366; See *M' Beath* v. *Ravenscroft*, 8 L. J., Ch. N, S, 208; Kerr on Injunctions, 6th Ed. 631.

6. Civ. Pr. Code, *O.* 39, r. 5.

7. Civ. Pr. Code, *O.* 21, r 32, cl. 2, cl. 5.

8. *Bass* v. *City of Shakopee*, 27 Minn., 250 (Amer.).

9. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B, 474. 484 (1894); Act 47 of 1963. s. 37: *See* also Civ. Pr. Code, O. 39.

10. Civ. Pr. Code, *O.* 40.

11. Act 47 of 1963, s. 4; Kerr on Injunctions, 8.

12. Act 47 of 1963, s. 41(d); *Holderstaffe* v. *Saunders*, 6 M, 12: *Montague* v. *Dudonan*, 2 Ves., 396. See the older cases collected in Eden, Inj., 41, 42.

CENTRAL LIBRARY

jurisdiction to restrain or prevent crime, or to enforce the performance of a moral duty, except so far as the same is concerned with rights to property; nor can it interfere on the ground of any criminal offence committed or for the purpose of giving a better remedy in the case of a criminal offence.[13] But if an act, which is criminal, touches also the enjoyment of property, the Court has jurisdiction, but its interference is founded solely on the ground of injury to property.[14] All prosecutors, whose charges are dismissed by the Metropolitan Magistrate, being affected by the order of discharge, have been *held* to be entitled[15] to copies of the order made, and of the depositions taken before the Magistrate, and an application to compel the Magistrate to grant such copies is not an application "for the mere purpose of enforcing penal law." Copies may be required for many purposes.[16] So also, if an act complained of touches the enjoyment of property the fact that it amounts to the criminal offence of misappropriation, rather than to smiple waste, is no ground for refusing relief by way of appointment of a Receiver.[17]

(ii) There must be a pending civil action.—Assuming the matter to be of a civil nature, it is a necessary condition to the existence of jurisdiction to grant relief, whether by the issue of an injunction[18] or the appointment of a Receiver,[19] that there should be a suit pending in which either of these reliefs may be granted.[20] So according to equity practice neither a common nor special injunction could in general be obtained except on bill previously filed.[21] So, again, no injunction can be granted where a suit has been dismissed for default and pending an application to restore it to the file.[22] And the suit must be pending in the Court from which either of these reliefs is sought.[23] Thus a District Court has no jurisdiction to issue an Injunction or to appoint a Receiver or manager in respect of property in dispute in a suit pending in

---

13. *All.-Gen.* v. *Sheffield Gas Co.*, 3 D. M. & G., 320; *Kerr v. Mayor, etc., of Preston*, 6 Ch. D., 463; *Emperor of Austria* v. *Day*, 3 D. F. & G., 253; *Saull* v. *Browne*, L. R., 10 Ch., 64.

14. Kerr, Inj., 6th Ed., 8; Act 47 of 1963, s. 4; *Macaulay* v. *Shakelt*, 1 Bligh, N. S., 127; *Mogul Steamship Co.* v. *Macgregor*, 15 Q. B. D., 476; *Att.-Gen.* v. *Sheffield Gas Co.*, supra; *Emperor of Austria* v. *Day*, *supra*.

15. Under s. 170 of the Presidency Magistrates' Act: See now Criminal Procedure Code, s. 363(5).

16. In the matter of *The Empress* on the prosecution of *The Bank of Bengal* v. *Dinonath Roy*, 8 C., 166, 168 (1881).

17. *Hanumayya* v. *Venkatasubayya*, 18 M., 23 (1894).

18. Civ. Pr. Code, *O.* 39; Act 47 of 1963, s. 37.

19. Civ. Pr. Code, *O.* 40; Kerr on Receivers, 111; Bennet's Receivers, 3; Ex parte *Mountford*, 15 Ves., 445, 447; *Butler* v. *Freeman*, Amb., 303 (Amer.).

20. The terms of the sections of the Code and Specific Relief Act cited in the last two notes assume the existence of a pending suit.

21. Eden, Inj., 45—48, 320; Drewry, Inj., 346; 360—362; 364. Nor has a Court jurisdiction to appoint a Receiver unless a cause be depending: Ex parte *Whitefield*, 2 Atk., 315; Bennet's Receivers. 3.

22. *Ramsarup* v. *Emperor*, 25 Cr. L. J,. 350 (1923).

23. *Dhundiram Santukram* v. *Chanda Nabai*, 2 Bom. H. C. R. 103, 2nd Ed., 98 (1865).

CENTRAL LIBRARY

a subordinate Court ; [24] and where a Court has thus no jurisdiction to make an order it can have no jurisdiction to modify such order.[25] Perhaps in an urgent case an *interim* Injunction will be granted before plaint is filed upon the applicant undertaking to file a plaint at once.[26] But the grant in such a case is a matter of indulgence, and the undertaking prevents it from being a real exception to the general rule. In a matter already pending before the Court and in which plaintiff may obtain full relief by motion a Court of Equity will not ordinarily entertain a new and independent action for an Injunction. When the Court is already in possession of a cause, having jurisdiction both of the subject-matter in controversy and of the parties, it may enforce obedience to its mandates by an Injunction issued merely upon a petition in the cause and without the filing of a suit.[27] But when a decree has been made and fully carried out in a cause, the cause is out of Court, and a motion for an Injunction cannot be made in that cause, although there may be ample ground for sustaining it in a new cause.[28]

(iii) Cognisance of the action must not be barred.—Not only must the matter be of a civil, as opposed to a criminal nature, and a suit be pending, but such suit must disclose a cause of action, and the Court must have general jurisdiction to entertain it ; if it has not such jurisdiction it will plainly have no power to grant relief in respect of the subject-matter of such suit by way of Injunction or appointment of Receiver. The Court must not be barred by the Code or any other enactment from taking cognisance of the suit,[29] which must, further, be not only of a civil nature generally, but within the mening of that Code.[30] Thus in *Maine Moilar* v. *Islam Amanath** where certain Moplahs, described as "the *Moktessar* and *Jamats*" of a mosque, sued certain other Muhammadans, described as "members of the Puslar caste." alleging that the custom was for the defendants to attend the plaintiffs' mosque on Friday at the reading of the *kutbah*, and that the defendants had recently built another mosque a short distance off, and had "for two months been attempting to read the *kutbah* there" ; and further alleging in the plaint that such reading of the *kutbah* was "quite contrary to the Muhammadan religion," and that the defendants nevertheless proposed to have the *kutbah* read, "whereby the *kutbah* or adoration conducted in our mosque will, according to religion, be fruitless" ; and the prayer of the plaint was for an injunction, restraining the defendants from reading the *kutbah* in their mosque ; it was held that, as it was not the province of the Courts to determine what is, or what is not, contrary to the Muhammadan religion, or to decide what religious service different sects of a community may hold in their own places of worship, provided the holding

---

24. *Ib.*
25. *Ib.*
26. v. *post.*
27. *Faison* v. *Mcllwaine*, 72 N. C., 312 (Amer.); In the matter of *Hemint*, 2 Paige, 316 (Amer.) cited in High, Inj., § 1566, and see cases cited in Joyce, Inj., 1259.
28. *Ford* v. *Compston*, 1 Cox, 296; Drewry. Inj., 360.
29. Civ. Pr. Code, s 9.
30. *Ib.*

* 15 M 355.

CENTRAL LIBRARY

of such services cause no disturbance or illegal annoyance to the rest of the community, or does not infringe on the rights of their co-worshippers,[31] the plaint disclosed no cause of action. The injunction was therefore refused and the suit dismissed.[32] But a suit, in which the right to property or to an office is contested, is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rights or ceremonies.[33] Such a suit, however, may be personal and therefore not of a civil nature, since personal offices, such as that of a family priest, are losing their legal character as such, and the Law tends to recognise only local offices.[34] In a case where the plaintiff sued for a declaration that he had a right to perform certain religious pageants in Benares and to receive voluntary offerings for them, and claimed an injunction against interference, it was held that the suit was personal and not civil within the meaning of section 9 of the Code of Civil Procedure, and the injunction was refused.[35] Nor must the claim be affected by the rule which relates to pending suits,[36] or the rule which prohibits the determination of an action by reason of its being *res judicata*.[37]

(iv) The Court must otherwise have jurisdiction to try the suit.—Lastly, the Court, to which application for the relief prayed for is made, must be one which assuming all the preceding conditions to have been fulfilled, has otherwise jurisdiction to try the suit in which that relief is sought. In this country the extensive powers of the Court of Chancery to act *in personam* must be considered with reference to the limitations on jurisdiction imposed by the Charters and by the Code of Civil Procedure.

19. "Equity acts in personam."—It is a well-known maxim that "equity acts *in personam*," that is, it regards its decrees as commands or directions—positive, as in the case of specific performance, or negative as in the case of injunction—addressed to the defendant personally, rather than as decisions directly affecting the subject-matter of dispute. Of this maxim the leading case of *Penn v. Lord Baltimore* [38] affords the chief illustration.[39] In this case, which

---

31. See *Fazl Karim* v. *Maula Baksh*, 18 C., 448 (1891), where an injunction was granted restraining defendants from interrupting religious ceremonies in a musjid.

32. *Maine Moilar* v. *Islam Amanath* ; 15 M., 355, 356 (1891).

33. Civ. Pr. Code, s. 9 *Explanations* as amended by Act 104 of 1976 : as to the right to an office, see *Srinivasa* v. *Tiruvengada*, 11 M., 450 (1888), where an Injucction was granted ; and *Raja Valad Shivapa* v. *Krishnabhat*, 3 B., 232 (1879); where an Injunction was refused but damages were given against the defendant.

34. Woodroffe & Ameer Ali, Civil Procedure, p. 85.

35. *Chunnu Dat Vyas* v. *Babu Nandan* (1910), 32 A., 527; see *Tholappala Charlu* v. *Venkata Charlu* (1895), 19 M. 62. *Srinivasa* v. *Tiruvengada* (supra) ; *Hur Lall v. Jeorakhan Lall* (1862), S. D. D., N. W. P., 314.

36. Civ. Pr. Code, s. 10.

37. *Ib.*, s. 11.

38. 1 Ves., 444 ; 2 White & Tudor, L. C. 837, 5th Ed. The bill in this case sought specific performance of an agreement entered into between the plaintiffs and the defendant for setting the boundaries of land in America (then a British colony) by drawing lines in a particular manner specified.

39. *See* Hanbury & Maudsley : *Modern Equity* (12th ed.), pp. 660-661 ;

CENTRAL LIBRARY

was a suit regarding land in the United States (that is, beyond the jurisdiction of the English Court of Chancery), Lord Chancellor Hardwicke stated, in effect, as follows :—"The strict primary decree in this Court, as a Court of Equity, is *in personam* ;[40] and although this Court cannot (in the case of lands situate without the jurisdiction of the Court) issue execution *in rem*—e.g., by elegit—still I can enforce the judgement of the Court which is *in personam*, by process *in personam* : e.g., by attchment[41] of the person when the person is within the jurisdiction, or by sequestration of the goods or lands of the defendant when these are within the jurisdiction of the Court, until the defendant do comply with the order or judgment of the Court, *which is against himself the defendant personally to do or cause to be done or to abstain from doing some act.*"

The Court may thus exercise jurisdiction quite independently of the locality of the act to be done, provided the person against whom relief is sought by way of injunction or otherwise is within the reach and amenable of the process of the Court. In the exercise of such powers the Court does not lay claim to the exercise of judicial and administrative rights in localities beyond its jurisdiction, but proceeds solely on the circumstance of the person, to whom the order is addressed, being within the reach of the Court. And not only must such person be within the reach of the Court as to locality but he must bear such a character as shall render him personally amenable to its jurisdiction.[42]

In accordance with the principle laid down in *Penn* v. *Lord Baltimore*, the Court of Chancery has entertained actions for account and discovery of rents and profits ; for specific performance and Injunction ;[43] for foreclosure of mortgages ;[44] and for the execution of conveyances and the like regarding lands

---

Smith's Principles of Equity, 2nd Ed. (1888), 16-18 ; *Ewing* v. *Orr Ewing*, L. R. 9 Ap. Cas., 40 ; *H. H. Shrimant Maharaj Vashvantrao Holkar* v. *Dadabhai Cursetji Ashburner*, 14 B., 353, 359 (1890).

40. And so the Court refused to decree quiet enjoyment of the lands. application for that purpose being proper only to Courts having jurisdiction over the land itself ; *Jairam Narayan Raje*, v. *Atmaram Narayan Raje*, 4 B., 482, 486, 487 (1880).

41. This power has been termed the keystone of the equitable jurisdiction. The High Courts in India have all the powers of a Court of Equity in England for enforcing their decrees *in personam* ; *see H. H. Holkar* v. *Dadabhai*, *supra* 359. and *post*.

42. Kerr, Injunctions, 11 and cases there cited, *Rajmohun Bose* v. *East Indian Railway Co.*, 10 B. L. R., 241, 248 (1872); *Dhuronidhur Sen* v. *The Agra Bank* (1879), 5 C., at p. 96. *Vulcan Iron Works* v. *Bishumbhur Prosad* (1908), 36 C., 233, following *Carron Iron Co.* v. *Maclaren* (1885), 5 H. L. C., 416.

43. Ex parte *Pollard*, 1 Mont. & Ch., 239; *Mercantile Investment Co.* v. *River Plate Co.* (1892), 2 Ch., 303; as to Injunctions, v. *post*: and as to the specific performance of contracts relating to land in India, see *Ramdhone Shaw* v. *S. M. Nobumoney Dossee*, Bourke, 218 (1865) ; *Kellie* v. *Fraser*, 2 C., at p. 453 (1877); *Sreenath Roy* v. *Cally Doss Ghose*, 5 C., 82 (1879) ; *H. H. Holkar* v. *Dadabhai*, 14 B., 353 (1890), and *post*.

44. *Paget* v. *Ede*, L. R., 18 Eq., 118. [See as to this case *The East Indian*

CENTRAL LIBRARY

situate abroad and whether within the Queen's dominions or not.[45] But if the very title itself to the lands is in question,[46] the Court will not assert its jurisdiction, for that is a question exclusively appropriate for the law of the country in which the property is situated. Moreover, when the lands in question are out of the jurisdiction no decree will be pronounced which purports *directly* to affect them.[47] Thus a partition of land in Ireland will not be decreed in England, simply because no power could be given to Commissioners to go there and take the steps necessary for carrying out decree.[48]

This, however, is totally distinct from such a case as *Penn* v. *Lord Baltimore* in which the decree (although its ultimate practical effect would no doubt be the settlement of boundaries out of the jurisdiction) dealt expressly with the agreement of the parties, and was directed immediately *in personam*.[49]

20. **The application of this maxim in India.**—The Courts of India have ordinarily no jurisdiction to try suits for immovable property, where such property is situate without local limits of their jurisdiction.[50] But it has been held in a case that the High Court may entertain an action in respect of immovable property provided a portion of such property is within its jurisdiction.[51] And it would appear to be doubtful whether the Equitable jurisdiction of the High Courts in India is of the same extent as that which has been claimed by the Court of Chancery, namely, to take cognisance of any equity between persons residing within the jurisdiction respecting lands outside it.[52] Thus the decisions are conflicting upon the point whether such Courts are empowered to entertain suits for foreclosure, or sale, or redemption of property beyond their local jurisdiction.[53] or for specific performance of contracts relating to land similarly

---

Railway Co. v. *The Bengal Coal Co.*, 1 C., 95, 100 (1875) ; *H. H. Holkar* v. *Dadabhai*, 14 B., 359 (1890) and *post*]; *Toller* v. *Carteret*, 2 Vern., 494; *Colyer* v. *Finch*, 5 H. L. Ca., 905 (1909).

45. *See* Smith's Principles of Equity, 16—18; *H. H. Holkar* v. *Dadabhai*, supra, 359.

46. *DeSouza* v. *British South African Co.* (1892), 2 Q. B., 358; In re *Hawthorne*, *Graham* v. *Massey*, 23 Ch. D., 743.

47. See *Yenkoba Balshet Kasar* v. *Rambhaji*, 9 Bom. H. C. R., 13 (1872).

48. *Carteret* v. *Pettus*, 2 Ch. Ca., 214; 2 Swanst., 323n; followed in *Ramchandra Dada Naik* v. *Dada Mahadev Naik*, 1 Bom. H. C. R., App., 76, 83 (1861); *Jairam Narayan Raje*, v. *Atmaram Narayan Raje*, 4 B., 482, 486 (1880), referred to in *The Delhi & London Bank* v. *Wordie*, I.C., at p. 256 (1876), s. c. 25 W. R., 292. See also *Sm. Padamani Dasi* v. *Sm. Jagadamba Dasi*, 6 B. L. R., 134 (1870).

49. Smith's Principles of Equity, 17, 18.

50. Letters Patent, 1865 (Calcutta), cl. 12 Civ. Pr. Code, ss. 16, 17

51. *Ganoda Sundary Chaudhurani* v. *Nalini Ranjan Raha*, 36. C., 29 (1909).

52. See *per* Sargent, C. J., in *H. H. Holkar* v. *Dadabhai*, 14 B., 353, 359 (1890).

53. According to the decisions of the Calcutta High Court, it seems to be settled law that the Court has no jurisdiction in such cases; *The East Indian Railway Co.* v. *The Bengal Coal Co.*, 1 C., 95, 100 (1875). ["The express words of cl 12 of the Letters Patent render the principles of he decision in *Paget* v. *Ede* (L. R., 18 Eq., 118) inapplicable." *per* Phear, J.] : See *Jaggodumba Dossee* v. *Puddomoney Dossee*, 15 B. L. R., 328, 329 (1875); *Bibee Jaun* v. *Meerza Mahomed Hadee*, 1 Ind. Jur. N. S., 40 (1866); *Sm. Lalmoney Dassi* v. *Juddoonauth Shaw*,

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

situated.[54] Moreover, the tendency even in the case of English Courts is to abstain from interfering *in personam* where the matter concerns land outside their jurisdiction.[55] The jurisdiction of the Courts governed by the Code appears to be certainly of a more limited extent than that possessed by the Court of Chancery. For not only are they expressly deprived of power to entertain suits for foreclosure or redemption,[56] but the other limitations imposed on their jurisdiction to try suits relating to immovable property are in terms extensive,[57] and the proviso determining their powers to act *in personam* limits the exercise of such powers to cases where the property is held by, or on behalf of, the defendants,[58] when the relief sought can be entirely obtained through his personal obedience, and where the property is situated in India.[59]

But whatever may be the precise extent of this general equitable jurisdiction, the Civil Procedure Code has expressly given to the Mofussil Courts the power to act *in personam*, when the person against whom relief is sought resides within the jurisdiction. So suits to obtain relief respecting or compensation for wrong to, immovable property held by or on behalf of the defendant[60] may, when the relief sought can be entirely obtained through his personal obedience,[61] be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction

---

1 Ind. Jur. N. S., 319 (1866) ; *Blacquiere* v. *Rndhone Doss, Bourke*, O. C., 319 (1865); In the matter of the petition of *S. J. Leslie*, 9 B. L. R., 171; 18 W. R., 260 (1872); *Kanti Chunder Pal Chowdhry* v. *Kissory Mohun Roy*, 19 C., 364 note (1887); *See*, however, observations of Garth, C. J., in *The Delhi and London Bank* v. *Wordie*, 1 C., at pp. 257, 263 (1876) ; but it is otherwise in Bombay ; *H. H. Holkar* v. *Dadabhai*, 14 B., 353 (1890); though as to the powers of the Mofussil Courts in that Presidency, *see* as to the former law, *Venkoba Balshet Kasar* v. *Rambaji*, 9 Bom. H. C. R., 12 (1872), and as to the present, *Vithalrao* v. *Vaghoji*, 17 B., 570 (1892).

54. In *Ramdhone Shaw* v. *Sm. Nobumoney Dossee*, Bourke, 218 (1865). See as to this case *The Delhi & London Bank* v. *Wordie*, I C., at p. 256 ; *Kellie* v. *Fraser*, 2 C., at p. 453 ; and *Juggodumba Dossee* v. *Puddomoney Dossee*, 15 B. L.R., 329 ; *Land Mortgage Bank* v. *Sudurudeen Ahmed*, 366 (*post*), and *H. H. Holkar* v. *Dadabhai*, 14 B., 353 (1890), the Court was held to have, and in *Sreenath Roy* v. *Cally Doss Ghose*, 5 C., 82 (1876), not to have jurisdiction. In *Land Mortgage Bank v. Sudurudeen Ahmed*, 19 C., 358 366 (1892), it was suggssted that there is a distinction between a vendor's suit and a purchaser's suit for specific performance ; *ib.* at p. 366.

55. *Land Mortgage Bank* v. *Sudurudeen Ahmed*, Supra at p. 367, *per* Trevelyan, J.; See *DeSouza* v. *British South African Company*, 8 Times L. R. 369; 2. Q. B. (1892). 358.

56. Civil Procedure Code. s. 16.

57. See Civil Procedure Code, s. 16.

58. See *Crisp* v. *Watson*, 20 C., 689 (1893).

59. Civ. Pr. Code, s. 16, *See* Explanation to section.

60. See *Crisp* v. *Watson*, 20 C., 689 (1893) [suit to recover damages for trespass to land and for an Injunction] in which it was also *held* that a suit for damage to land cannot be said to be a suit for which relief can be entirely obtained through the personal obedience of the defendant, even though it may be joined with a claim for an Injunction.

CENTRAL LIBRARY

he actually and voluntarily resides, or carries on business, or personally works for gain.[62] "Property" in this section means property situated in India.[63] The Chartered High Courts under their Charters have a similar, but in terms less restricted jurisdiction.[64]

Rajmohun Bose v. East Indian Railway Co. and Moolji Jaitha & Co. v. K. S. & W. Mills Co.—Thus where the plaintiffs, the owners and occupiers of a house and premises in Howrah, sued in the High Court at Calcutta for an Injunction to restrain a nuisance caused by certain workshops, forges and furnaces erected by the defendants, and for damages for the injury done thereby, it was *held* that as regards jurisdiction, the defendant company being undoubtedly personally subject to the jurisdiction, by reason of their carrying on business in Calcutta, the Court could properly deal with the suit, which was not a suit "for land,"[65] but one exclusively *in personam*, where the person against whom relief was sought was within, and subject to, the jurisdiction, though the relief sought was in respect of acts done on land situated beyond the local limits of the original jurisdiction.[66]

Juggodumba Dossee v. Puddomoney Dossee.—And in the case of Receivers it is not necessary in all cases in order to authorize the Court to appoint a Receiver, that the property in respect of which he is to be appointed should be within the local limits of its jurisdiction.[67] Thus in a suit brought by some of the persons appointed trustees under a deed of endowment of certain land against their co-trustees, who were in possession, the plaint alleged that the defendant trustees had ousted the plaintiffs and had committed breaches of trust, and prayed that the deed might be construed and given effect to, and for a declaration that the plaintiffs were entitled to be *sebaits* jointly with the defendants for the settlement of a scheme for the performance of the worship, for the appointment of a Receiver, for an injunction to restrain the defendants

---

61. See *Vithalrao* v. *Vaghoji*, 17 B., 570, 572 (1892)

62. Civ, Pr. Code. s. 16.

63. Ib. ; *Vithalrao* v. *Vaghoji*, supra, 572.

64. Letters Patent, 1865 (Calcutta), s. 19; Letters Patent, 1862, cl. 18; 24 & 25 Vic., c. 104, s. 9. As to the equitable jurisdiction of the High Courts inherited from the late Supreme Courts, v. *ante*, p. 5, note (1). See *H. H. Holkar*. v. *Dadabhai*, 14 B., 353 (1890).

65. *i.e.*, within the meaning of s 12 of the Letters Patent, 1865, or s. 5 of Act VIII of 1859. See *Moolji Joitha & Co.* v. *K. S. & W. Mills Co.*, A.I,R, 1950 F. C. 83 (Taking the 'suit for land' as a whole "one has to consider whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the suit is something different but involves the consideration of the question of title to land indirectly." per Kania, C. J.).

66. *Rajmohun Bose* v. *East Indian Railway Co.*, 10 B. L. R., 241, 248 (1872). See also *The East Indian Railway Co.* v. *The Bengal Coal Co.*, 1 C., 95 100 (1875); *The Delhi and London Bank* v. *Wordie* 1 C., 249, 251, 263 (1876), and cases there cited ; as to the issue of prohibitory orders (merely in the nature of Injunctions) against a defendant within the jurisdiction : See *Ramlochun Sirkar* v. *S. M. Kaminee Debee*, 10 B. L. R., 63 note (1868).

67. *Juggodumba Dossee* v. *Puddomoney Dossee*, 15 B L. R., 318, 324, 325, 330 (1875) ; see also *Jairam* v. *Atmarom*, 4 Bom. 482.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

from interfering with the property and for an account. By the deed t
was given to idols named therein. and the plaintiffs and defendants w
pointed, subject to certain directions, *sebaits* and managers of the p
but were themselves to have no beneficial interest in the property.[68] T
the subject of the deed, was situated out of Calcutta but all the parties
suit resided within the local limits of the High Court's jurisdiction :[69]
held that as the parties had no personal beneficial interest in the settl
perty the suit was not one "for land" within the terms of the Charter a
the Court had accordingly jurisdiction to entertain it and to appoint, if
sary, a Receiver of such property.[70] In respect of the objection that
had no power to appoint a Receiver it was said : "It has been the prac
this Court, where it is necessary to do so, in order to enforce its own
to appoint a Receiver in respect of landed property situate in the M
and we feel ourselves justified in following that practice."[71] But in an
case where the whole cause of action did not arise in Calcutta and or
defendant was personally subject to the jurisdiction and the immovabl
perty was in Bombay, the Court was not prepared to say that it could
a Receiver for the property which was within the jurisdiction of the E
Court ; but was of opinion that, whether it might or might not ap
Receiver of the property in Bombay, it would certainly be a most inc
ent course to adopt.[72]

21. Must be considered with reference to the statutory jurisdic

But in this country the power to make orders *in personam*, though the s
matter of the suit is without the jurisdiction, must be considered with ref
to the limitations on jurisdiction imposed, in the case of the High Cou
their respective Letters Patent,[73] and in the case of Mofussil Courts,
Civil Procedure Code.[74] Regard must be had to the real object of t
and to what are the rights and contentions of the respective p
and those cases which are founded upon the principle laid do
Penn v. *Lord Baltimore* must be distinguished from those
depend, not so much upon the jurisdiction generally exercised by Cou
Equity, as upon the question whether the suit is substantially one with

68. See *The Delhi and London Bank* v. *Wordie*, I C., 261 (1876), *per* Pc
J.

69. Where some of the parties opposing the appointment of a Receive
not subject to the jurisdiction, the Supreme Court stated that it "would
be careful, for that reason, to limit the appointment to the portion of the est
the possession of those subject to the jurisdiction and before the Court."
dinath Paul Chowdry v. *Bycauntnath Paul Chowdry*, 2 Tay. & Bel., 192 (185
318, 324

70. *Juggodumba Dossee* v. *Puddomoney Dossee*, 15 B. L. R. maram N
330 (1875) ; [See remarks on this case in *Jairam Narayan Raje* v. A
Raje, 4 B., 482, 884, 485 (1880)].

71. *Juggodumba Dossee* v. *Puddomoney Dossee*, 15 B. L. R., 3 18, 324, 32
(1875) ; [See remarks on this case in *Jairam Narayan Raje* v. Ati naram N
Raje, 4 B., 482, 484, 485 (1880)].

72. *Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Ha* djee Joosu
B. L. R., 91, 99 (1874).

73. Letters Patent, 1865 (Calcutta), cl. 12.

74. Civ. Pr. Code, s. 16.

CENTRAL LIBRARY

statutory jurisdiction conferred upon the Courts.[75] And therefore when a suit, which though in form one brought to obtain an Injunction, is in substance a suit "for land," which land is situate without the local limits of the jurisdiction of the Court, the latter has no power to grant the relief prayed.[76] A suit which is in form one for trespass may be in reality a suit for the possession of land being brought in that form for the purpose of trying the title to it.[77]

Delhi and London Bank v. Wordie.—Similarly, when there is no jurisdiction to entertain a suit on the ground that it is one for immovable property situated without the local limits of the jurisdiction, the Court will have no power to grant provisional relief by way of the appointment of a Receiver to take charge of the subject-matter of dispute in such suit.[78] Thus where a suit was brought which, amongst other reliefs, prayed that a Receiver might be appointed to carry out certain trusts it was *held* that though the plaint disclosed a good cause of action as the Court, if it had jurisdiction, would have power to grant certain forms of relief prayed, including the appointment of a Receiver of the estate, yet in as much as the suit was in substance one "for land" within the meaning of the Charter, the Court had no jurisdiction to try it. And accordingly, all relief and of necessity also such appointment, was refused.[79] Even when land which was situate out of the local limits of the jurisdiction of the High Court was already in the possession of a Receiver appointed by the late Supreme Court,[80] it was *held* that the High Court could not exercise jurisdiction in respect to such land in a suit which was held to be one "for land" within cl. 12 of the Letters Patent.[81]

The test, therefore, of jurisdiction in all such cases is rather the nature of the claim made in respect of the property in suit than the actual situation of such property. If the suit is not, by reason of its substantial character and the provisions of the Code or Charters, within the cognisance of the Court, the latter is unable to grant relief. But where the relief sought is purely *in personam* and not *in rem*, the Courts are empowered to make a decree, which shall be of the same character.

---

75. *The Delhi and London Bank* v. *Wordie*, 1 C., 249, 263 (1876); *Land Mortgage Bank* v. *Sudurudeen Ahmed*, 19 C., 358, 367 (1892).

76. *The East Indian Railway Co.* v. *The Bengal Coal Co.*, 1 C., 95 (1875).

77. See *The Delhi and London Bank* v. *Wordie*, 1 C., 259 (1876) *per* Garth, C. J.

78. *The Delhi and London Bank* v. *Wordie*, 1 C., 249, 257 (1876) explained in *Kellie* v. *Fraser*, 2 C., 453, 457, 463, 465 (1877).

79. *The Delhi and London Bank* v. *Wordie*, 1 C., 249, 257 (1876), explained *in Kellie* v. *Fraser*, 2 C., 453, 457, 463, 465 (1877).

80. The jurisdiction of the Supreme Court was not limited in the manner that the jurisdiction of the High Courts is limited: *See* Charter of Supreme Court, 1774, cl. 13: 1 Smoult & Ryan's Rules and Orders, pp. 9—11; it had the power of dealing with land out of Calcutta: See *Doe d. Colvin* v. *Ramsay*, Morton, 148; *Doe d. Hurlall Mitter* v. *Hilder*, ib., 183; *Doe d. Bampton* v. *Petumber Mullick*, Bing., 24; *Doe d. Muddoosoodun Doss* v. *Mohender Lall Khan* 2 Boul., 40; *Doe d. Chuttoo Sick Jemadar* v. *Subbessur Sein*, *ib.*, 151; *Dorab Ally Khan* v. *Moheeruddeen*, I C., 55; *Taramoney Dossee* v. *Kistnogovind Sein*, 2 Morley's Digest. 61.

81. *Denonath Sreemoney* v. *C. S. Hogg*, 1 Hyde, 141 (1862), (1863).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

22. Jurisdiction to issue Injunctions.—Suits to obtain an Injunction may be entertained by all Civil Courts,[82] with the exception of Presidency[83] and Provincial[84] Small Cause Courts. The Presidency High Courts have, in addition to the powers granted by the Code and Specific Relief Act, inherited the Equitable jurisdiction of the Supreme Courts of the Presidencies of Calcutta, Bombay and Madras.—which were in their turn generally invested with the power and authority of the Court of Chancery.[85] But the Civil Procedure Code has laid down with precision the cases in which the Mofussil Courts can grant injunctions, and their jurisdiction is not lightly to be extended in this respect.[86] The jurisdiction may be exercised either by Courts of first instance or Courts of appeal. Under the Code of Civil Procedure, once a suit has been dismissed the Court dismissing it is *functus officio*, save that it may stay execution of its own decree or order for costs. On such dismissal an injunction, which has been granted, comes to an end.[87] An application, therefore, made to a Court of first instance after dismissal of the suit, but before appeal filed, asking that the Receiver may be restrained from parting with funds in his hands pending an appeal, cannot be granted.[88] The Court of the first instance has therefore no jurisdiction to maintain an Injunction after the claim is dismissed, or until an appeal shall have been lodged, or after the appeal has been admitted during the pendency of the appeal.[89] or a *fortiori* when suit for an injunction is dismissed can the Court which dismisses such suit take upon itself to stay by injunction the execution of a decree passed in another suit.[90] But the Appellate Court has the same

---

82. With respect to the jurisdiction of the High Court, *See* 24 & 25 Vic., c 104, s. 9 ; Letters Patent, 1865 (Calcutta), ss. 11—21 ; as to the Letters Patent, tor the other Presidency High Courts, *See* p. 4, Note 4, *ante*. Letters Patent, 1866 (Allahabad). ss 9—14. Act XIV of 1869 (Civil Courts, Bombay), ss. 7, 12. 16, 24 ; Act III of 1873 (Civil Court, Madras) s. 12. As to the jurisdiction of Mamlatdars to issue Injunctions see *Desai Molabhai Bapubhai* v. *Keshavbhai Kuberbhai*, 12 B., 419 (1887) ; *Gulabbhai Gopalji* v. *Jinabhai Ratanji*, 13 B., 213 (1888) ; *Chintamanrav Narayan Gole* v. *Bala*, 14 B., 17 (1889) ; *Nemava* v. *Devandrappa*, 15 B., 177 (1890), and Bombay Act III of 1876.

83. Act XV of 1882, s. 19, cl. (*i*). [The Small Cause Court shall have no jurisdiction in suits to obtain an Injunction.]

84. Act IX of 1887. s. 15, sched. ii, cl. 17 [a suit to obtain an Injunction is excepted from the cognisance of a Court of Small Causes].

85. *Rash Behary Dey* v. *Bhowani Churn Bose*, (1906), 34 C,, 97 ; *Uderam Kessaji* v. *Hyderally Abdul Khayum* (1908). 33 B.. 469.

86. *Joynarain Geeree* v. *Shibpersad Geeree*, 6 W. R., Misc., 1, 3 (1866). *See* remarks as to the applicability of proceedings in equity to Mofussil Courts, *ib. and Roy Lulchmiput Singh Bahadoor* v. *Secretary of State for India*, 11 B. L. R., App., 27, 28 (1873).

87. *Yamin-ud-Dowlah* v. *Ahmed Ali Khan*, 21 C., 561 (1894); *Shaikh Moheeooddeen* v. *Shaikh Ahbed Hossein*, 14 W. R., 384, 385 (1870) : *Gossain Money Puree* v. *Gour Pershad Singh*, 11 C., 146 (1884) ; *Ram Chand* v. *Pitam Mal*, 10 A., 506 (1888).

88. *Yamin-ud-Dowlah* v. *Ahmed Ali Khan*, supra.

89. *See* cases cited in note (2).

90. *Gossain Money Puree* v. *Gour Pershad Singh*, *supra*.

CENTRAL LIBRARY

powers in respect of granting an injunction which the Court of Original Jurisdiction has, and an application for an injunction pending appeal should be made to it as being the Court having cognisance of the suit.[91]

A suit for a declaration of right and for an injunction falls under s. 7, cl. 4, sub-cls. (*c*) and (*d*) of the Court Fees Act, VII of 1870. The valuation of the relief sought in such a suit rests with the plaintiff, and not with the Court.[92] So when *A* sued *B* and *C* (*i*) for a declaration of his title to certain property, and (*ii*) for an injunction restraining *C* from paying, and *B* from receiving, an allowance of Rs. 2,400 a year out of the income of the property in dispute ; *A* valued each of the reliefs sought at Rs. 130, and affixed a court-fee stamp of Rs. 20 to the plaint. The Court of first instance rejected the plaint as insufficiently stamped, holding that the claim for the Injunction sought should have been valued at ten times the annual allowance paid by *C* to *B*, as provided by s. 7, cl. 2 of Act VII of 1870. On appeal to the High Court, it was held that the suit fell under s. 7. cl. 4, sub cls. (*c*) and (*d*) of the Court Fees Act, and that the plaintiff had a right to put his own valuation on the relief sought ; it was *held* also, that the order rejecting the plaint as insufficiently stamped was appealable.[93]

In respect of the subject-matter of an injunction, the latter should, when granted, be strictly confined to the property in dispute. When, therefore, the property in dispute in a suit was not the entire movable and immovable property in the possession of the defendant, but the half share to which the plaintiff laid claim, a Court was *held* to have acted beyond its powers in granting an injunction and in appointing a Receiver in respect of the entire property in the hands of the defendant and not merely of the share claimed by the plaintiff.[94] It has however, been *held* that in a suit for partition of a joint estate the Court has jurisdiction to place the whole of the joint estate out of which the plaintiff seeks to have his share partitioned in the hands of a Receiver, and to order that the latter shall be at liberty to raise money of the security of the whole of such joint estate.[95] The Court must have jurisdiction in respect of the subject-matter to which the injunction refers. Jurisdiction to grant an injunction may be excluded by s. 41 of the Specific Relief Act or by the provisions of some other

---

91. *Shaikh Moheeooddeen* v. *Shaikh Ahmed Hossein*, supra, 385; *Gossain Money Puree* v. *Gour Pershad Singh*, supra, 149; *Kirpa Dayal* v. *Ram Kishori*, 10 A., 80 (1887); *Kanahi Ram* v. *Biddya Ram*, 1 A., 549, 551, note (1878).

92. *Vachhani Keshabhai* v. *Vachhani Nanbha Bavaji* (1908), 33 B., 307; following *Hari Sanker Dutt* v. *Kali Kumar Patra* (1905), 32 C., 734 ; distinguishing *Dayaram* v. *Gordhandas* (1907), 31 B., 73.

93. *Sardar Singji* v. *Ganpat Singji*, 17 B., 56 (1892). See *Bai Amba* v. *Pranjivandas Dullabh Ram*, 19 B., 198, 201 (1894) ; cf. *Sardar Singji* v. *Ganpat Singji*, 14 B., 395 (1889).

94. *Joymarain Geeree* v. *Shibpersad Geeree*, 6 W. R., Misc., 1 (1866); but *see* next note and *Mun Mohinee Dossee* v. *Ichamoyee Dossee*, 13 W. R., 60 (1870), where it was said that "To appoint a receiver and to issue an Injunction which shall affect an undivided half share only is an impossibility", *per* Phear, J.

95. *Poreshnath Mookerjee* v. *Omerto Nath Mitter*, 17 C., 614 (1890).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Act.[1] Thus under the former Act an injunction cannot be granted to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;[2] nor to stay proceedings in a Court not subordinate to that from which the injunction is sought ;[3] nor to stay proceedings in any criminal matter.[4] And indeed, as has been already observed,[5] the Court has no jurisdiction to interfere by injunction in matters merely criminal or merely immoral, which do not affect any right to property ; Nor has the Court jurisdiction to interfere with the public duties of any department of the Central Government or the State Governments or with the sovereign acts of a foreign government ;[6] nor to restrain persons from applying to any legislative body ;[7] nor do matters of a political nature come within the jurisdiction of the Court.[8] Under the writ jurisdiction of the High Court no interim injunction shall be granted either on an oral application or by a non-speaking order.[9] And as the jurisdiction of the Court is governed upon strictly Equitable principles, it will not, and is not empowered to grant an injunction when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court ;[10] to prevent a continuing breach in which the applicant has acquiesced ;[11] or, since an injunction is an exceptional form of relief, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust ;[12] or when the applicant has no personal interest in the matter.[13] Lastly, when the subject-matter of the Injunction

---

1. *Mahip Singh* v. *Chotu*, 5A., 429, 430 (1883). Section 41 of the Specific Relief Act has particular reference to perpetual Injunctions only, but the general principles respecting the grant of all Injunctions are to be sought for in this Act.

2. Act 47 of 1963, ss. 41(a), 38(3) (d); Kerr on Injunctions, 597; Story's Equity Jur., §§ 852—860; See *Bheer Chunder Jhoograj Goshanee* v. *Hogg*, Cor., 56 (1864); *Lutcheemund Sett* v. *S. M. Komulmonee Dossee*, 1 Ind. Jur., N. S., 9 (1866); *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352, 358, 359, 366 (1875); *Dhuronidhur Sen* v. *Agra Bank*, 4 C., 380 (1878); 5 C., 86 (1879); *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80, 82 (1887); *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 214, 220 (1887); *Appu* v. *Raman*, 14 M., 425, 429, 430 (1891); *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 M., 338 (1895), see *post*.

3. Act 47 of 1963, s. 41(b); see *Dhuronidhur Sen* v. *Agra Bank*, 4 C., 380 (1878) ; *Mahip Singh* v. *Chotu*, 5 A., 429 (1883) ; *Appu* v. *Raman*, 14 M., 425 (1891) ; *Venkatesa Tawker* v. *Ramasami Chettiar* 18 M., 338 (1895) ; see *post*.

4. Act 47 of 1963 s. 41(d) ; see *post*.

5. Kerr on Injunctions, 8.

6. Kerr on Injcnctions, 7.

7. Act 47 of 1963 s. 41(c); *See* Kerr on Injunctions, 12.

8. Kerr on Injunctions, 10; *Emperor of Austria* v. *Day*, 3 D. F. & J., 217; *United States* v. *Prioleau*, 2 H. & M., 559; 2 Equity, 659.

9. *Asst. Collector, C. E.* v. *Dunlop India Ltd.* A.I.R. 1985 S.C. 330,

10. Act 47 of 1963, s. 41(i); *Littlewood* v. *Caldwell*, 11 Price, 97, ill. (*b*); *Morgan* v. *McAdam*, 36 L. J., Ch. 228, ill. (*c*); *Perry* v. *Truefitt*, 6 Beav. 76

11. Act 47 of 1963, s. 41(g)

12. Act 47 of 1963, s. 41(h) ; as to the meaning of "trust" and "trustee," see *ib*. s. 2.

13. Act 47 of 1963, s. 41(j).

CENTRAL LIBRARY

is the breach of a contract, or the committal of the tort of nuisance, an Injunction cannot be granted in the first place to prevent the breach of a contract, the performance of which would not be specifically enforced ;[14] nor in the second to prevent, on the ground of nuisance, an act which it is not reasonably clear will be a nuisance.[15]

23. The exercise of jurisdiction is discretionary.—"Under the Specific Relief Act the Courts are given a discretion to grant or withhold an injunction.[16] In England Courts have a discretionary power to award damages in lieu of an Injunction.[17] In this view of the law, the Court has to consider in each case not merely whether the plaintiff's legal right has been infringed, or even materially infringed, but also whether under all the circumstances of the case he ought to be granted an injunction as the proper and appropriate remedy for such infringement."[18] The Court has a discretion to refuse all relief or to refuse an injunction and to give damages, where these are the appropriate remedies,[19] or to combine damages with a limited injunction.[20] But if a Court refuses an injunction on the ground that pecuniary compensation is the plaintiff's proper remedy, it ought not to dismiss the suit, but ought either itself to award damages or to order an enquiry as to damages ;[21] and when a right is established, as to an easement, the plaintiff is entitled either to an injunction or to damages and is not obliged to accept some third form of relief.[22] This discretion is a reasonable discretion, and it must depend upon the special circumstances of each case whether it ought to be exercised.[23] And where the issue of an injunction is the subject of appeal, it is for the defendant-appellant against whom it is granted to show that the lower Court

---

14. Act 47 of 1963, s. 41(e). In the matter of *Gunput Narain Singh*, I C., 74, 78 (1875); *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B., 266, 280, 281 (1881); *Madras Railway Company* v. *Rust*, 14 M., 18 (1890); *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702 (1894); 19 B., 764 (1895), same case in appeal, and see *post*.

15. Act 47 of 1963, s. 41(f), *see Kennaway* v. *Thimpson*, (1980)3 All E.R. 329(C.A.) ; *Miller* v. *Jackson*, (1977)3 All E.R. 338 (C.A.)

16. Act 47 of 1963, s. 36; *Shadi* v. *Anup Singh*, 12 A., 439 (1889). As to discretion, see *per* Lord Mansfield in *Wilke's case*, 4 Burn, 2539, cited in *Harbuns Sahai* v. *Bhairo Pershad Singh*, 5 C., 259, 265 (1879). *See* also remarks in *Queen-Empress* v. *Chagan Dayaram*, 14 B., 331, 344, 352 (1890), *per* Jardine, J. ; *Tituram Mukerji* v. *Cohen*, P.C. (1906), 33 C., 203.

17. Formerly under Lord Cairns Act, 21 & 22 Vic., c 27, and now under the Judicature Act, 1873. *See* Kerr on Inj., 32, 33 and *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy* 8 B., 70, 71 (1883); *Dhanjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 260, 261 (1888).

18. *Per Farran*, J., in *Ghanasham Nilkant Nadkarni* v. *Moroba Ram Chandra Pai*, 18 B. (1894). at p. 488.

19. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, supra, 70.

20. *Ib.*, supra, 77. 91.

21. *Callianji Harjiban* v. *Narsi Tricum*, 19 B., 764 (1895).

22. *Kadarbhai* v. *Rahimbhai*, 13 B., 674 (1889).

23. *Per* Jessel, M. R., in *Aynsley* v. *Glover*, 18 Eq., 546, cited in *Dhanjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 260 261 (1888): *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 70, 71 (1883).

CENTRAL LIBRARY

has exercised a wrong discretion.[24] The Courts of Equity have, however, constantly declined to lay down any rule which shall limit their power and discretion as to the particular cases in which injunctions shall be granted or withheld; for it is impossible to foresee all the exigencies of Society which may require their aid and assistance to protect rights, or redress wrongs. This jurisdiction is manifestly indispensable and should be fostered and upheld. At the same time its exercise is attended with no small danger both from its summary nature and its liability to abuse. It ought therefore to be guarded with extreme caution,[25] and applied only in very clear cases, otherwise it may become a means of extensive, and perhaps of irreparable, injustice.[26] In granting relief tht Court proceeds upon principles of general or particular application which will be found hereinafter discussed in their appropriate places. Generally speaking, the Court will consider, amongst other things, whether the doing of the thing sought to be restrained must produce an injury to the person seeking the injunction; whether such injunction will operate oppressively or inequitably or contrary to the real justice of the case, or will work an immediate mischief or fatal injury. It will not interfere where there has been acquiescence in the mischief sought to be restrained or in cases of gross laches or delay by the party seeking the relief in enforcing his rights; nor to enforce covenants which are unreasonable and from which inconvenient consequences may ensue; nor in cases where its interference can have no effect; nor when equally efficacious relief can certainly be obtained by any other usual mode of proceeding. And even where the plaintiff has made out a case for relief the Court will consider whether an injunction is the fit and appropriate mode of redress under all the circumstances of the case.[27]

The appointment as well as the removal of a Receiver is also a matter which rests in the sound discretion of the Court.[28]

Reference has already been made (*i*) to the nature and subject-matter of an injunction regarded by itself, (*ii*) the persons in whose favour, and (*iii*) against whom its issue will be directed; there still however remains (*iv*) the question by whom an injunction may be granted: an enquiry which involves directly a consideration of the Courts which possess his equitable power, and ancillary thereto, a further consideration of those principles upon which this power is exercised, as well of the relief which may be granted in suits in which an injunction is prayed.

---

24. *Shadi* v. *Anup Singh*, 12 A., 436 (1889). See, *Beni Madho* v. *Ram Nath*, A.I.R. 1941 Cudh 324.

25. See *Mun Mohiney Dossee* v. *Ichamoyee Dossee*, 13 W. R., 60 (1870), *per* Phear, J.:—"I need hardly say that the power of issuing Injunctions and appointing a Receiver *pendente lite* which is given to the Civil Court by s. 92, Act VIII of 1859, ought to be most cautiously exercised." *Chunilal* v. *Surat City Municipality*, 27 B., 403 (1903).

26. Story, Eq. Jur., § 959*b*, and cases there cited.

27. Story, Eq. Jur., § 959*a*, *see* Act 47 of 1963, ss. 38, 41. As to balance of convenience, *see* Kerr on Inj 24.

28. Kerr on Receivers, Ch. I; *Sidheswari Dabi* v. *Abhoyeswari Dabi*, 15 C., 818, 822, 823, (1888); *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 464 465 (1895). Ex parte *Jijai Amba*, '13 M., 390 (1890) [removal of Receiver].

CENTRAL LIBRARY

24. Courts by which an Injunction may be granted.—Suits to obtain an injunction may, as already observed, be entertained by all Civil Courts, with the exception of Small Cause Courts.[29] Assuming that the Court is one of competent jurisdiction and that those conditions exist in the facts of the particular case, whcih are necessary to the exercise of this jurisdiction,[30] it may be so exercised either by a Court of first instance or by a Court of appellate or revisional jurisdiction, at the time and subject to the conditions hereinafter mentioned.

(i) Courts of Original Jurisdiction.—A Court of first instance may grant under the provisions of the Code a temporary injunction to continue until a specified time or until the further order of the Court.[31] This injunction may be granted at any period of a suit,[32] but is usually applied for and obtained by motion *ex parte*, or on notice after the presentation of the plaint,[33] and before the hearing upon the trial. A temporary injunction may be granted even after the hearing and decree. In the undermentioned case[34] which was one for ejectment, the Court granted a decree for possession of the land. Plaintiff's counsel at the close of the case stated that he was instructed that the defendant was then removing the materials of the house on the premises in dispute, and asked for an injunction to restrain the removal. The Court granted an injunction *nisi* to be made absolute with costs, if cause were not shown against it within four days. Cause was shown by the defendant who alleged the existence of a custom under which he was entitled to remove the materials abovementioned. The Court then continued the injunction, and gave leave to the defendant to bring a suit within two months to establish the special custom alleged, and ordered that in default of such suit being brought (as it in fact never was) the injunction should be made perpetual with costs. If the suit is decreed upon the merits and (as only then can be done)[35] relief by way of permanent injunction is granted, such injunction will, of course, as a portion of such decree subsist pending, and its operation will not be stayed by reason only of an appeal. When a decree has been made and fully carried

---

29. See *ante*.

30. See *ante*.

31. Act 47 of 1963, s. 37 ; Civ. Pr. Code, *O*. 39 as amended by Act 104 of 1976.

32. *See* Act 47 of 1963, s. 37.

33. According to English practice in an urgent case an *Interim* Injunction may be grated before bill filed on the plaintiffs undertaking to file the bill at once;*Thornley* v *Skoines*, 16 Eq., 126; *Carr* v. *Morice*, 16 Eq., 125. See Eden., Inj. 45—48, 320; Drewry, Inj., 346, 360—362, 364. As upon such undertaking the suit may be said to be practically instituted, and as the issue of the Injunction is made dependent upon its fulfilment, there would seem to be no objection to the adoption of this practice in Indian Courts. In other than urgent cases the rule in England, as in this country, is that the statement of claim or plaint must be first field. *See. Halsbury's Laws of England* (4th ed.) Vol. 24, pera 1051, see also s. 148A, C.P.C. 1908 as amended by Act 104 of 1976 which provides for a right of the caveator to lodge a caveat. On lodgisg of a caveat the court is required to serve notice of application for injunction on the caveator.

34. *Doyalchand Laha* v. *Bhoyrubnath Khettry*, Cor., 117 (1864).

35. Act 47 of 1963, s. 37.

CENTRAL LIBRARY

out in a cause, the cause is out of Court and a motion for injunction cannot be made in that cause, although there may be ample ground for sustaining it in a new cause.[36] A perpetual injunction is final and it is not necessary to revive it upon the death of either of the parties, in order to keep it on foot : for if so it would in effect be decreeing a perpetual suit.[37] And, if a suit for an Injunction is *dismissed*, any temporary injunction which may have been granted comes to an end.[38] The power of the Court in such matters extends only over the subject-matter of the suit, and therefore when the suit comes to an end when there can be no longer any decree to satisfy, or any property coming to the plaintiff in that suit, there can be no further ground for the continuance of an injunction or like measure. The Court, which dismisses such a suit, becomes *functus officio*, save that it may stay execution of its own decree or order for costs. An application, therefore, as in the case cited in the next paragraph, made to a Court of first instance after dismissal of the suit, but *before* appeal filed, asking that a Receiver may be restrained from parting with funds in his hands, pending an appeal, is not within jurisdiction of such Court to grant. But the dismissal of the action does not prevent the plaintiff from bringing another for the same purpose under a different set of circumstances[39] or upon new facts.[40] And in a case it has been held that the dismissal of a suit for an Injunction on the ground that possession of the property was not proved is not a bar to a subsequent suit for possession of the same property.[41]

Suit for setting aside a decree in an earlier suit and interim injunction in execution of a decree.—A Division Bench of the Madhya Pradesh High Court in *Surendra Singh* v. *Lal Sheoraj* (A.I.R. 1975 M.P. 85) has held that it is open to the court on being provisionally satisfied that there is a fraud played in obtaining the previous decree to arrest the execution of an earlier decree pending disposal of the subsequent suit. A Full Bench of the Andhra Pradesh High Court in *Appalanarasimha* v. *Seethayamma* (A.I.R. 1959 A.P. 310) approving the judgment of the Division Bench of that High Court in *A. Venkanna* v. *R. Venkatarao* (A.I.R. 1957 A.P. 453) has held that a temporary injunction cannot be issued to restrain the decree-holder from executing the decree. The ratio of these decisions is that Order 39, rule 1 of the Civil Procedure Code would not be available to restrain the execution of an earlier

---

36. *Ford* v. *Compton*, 1 Cox. 296 ; Drewry, Inj., 360.

37. *Askew* v. *Townsend*, 2 Dick., 471, cited in *Morgan* v. *Scudamore*, 2 Ves., 316 ; *Yeomans* v. *Kilvington*, 1 Dick., 371. As to abatement, see Kerr, Inj., 663; Eden, Inj., 129, 130.

38. v. *post.*

39. *Mayor of Liverpool* v. *Chorley Water-works Co.*, 2 D. M. & G., 852 ; *Castelli* v. *Cork*, 7 Ha., 89, 99.

40. *Att.-Gen.* v. *Sheffield Gas Co.*, 3 D. M. & G., 304, 341. See Halsbury's *Laws of England* (4th ed), Vol. 24, paras 1115-1200.

41. *Bande Ali* v. *Gokul Miser*, 34 A., 172 ; (1911) following principle of *Darbo* v. *Kesho Rai* (1879), 2A., 356 ; *Sarsuti* v. *Behari Lal* (1883). 5 A., 345 ; *Mohun Lal* v. *Bilaso*, (1892), 14A., 512.

CENTRAL LIBRARY

decree, because no one would suffer an injury by execution of a decree. But in *M. Janikamma* v. *H. Vajjula Paradeshi* (A.I.R. 1980 A.P. 208) it has been held by the Division Bench of the Andhra Pradesh High Court that it is well known that any order made by a court on the basis of fraud will be incapable of either constituting or extinguishing legal rights. As Lord Denning in *Lazarus Estates Ltd.* v. *Beasley* [1956]1 All E.R. 341 at page 345 puts it that "no judgement of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud". Thus the Court has jurisdiction to decide the question provisionally and issue an injunction restraining the execution in appropriate cases. Otherwise the court will fail to protect the judgment-debtor from suffering substantial injury.

In *S.B. Noronah* v. *Prem Kumari* (A.I.R. 1980 S.C. 193) it has been held by the Supreme Court following Halsbury's *Laws of England*, (4th ed.) vol. 16, para 1553 that "a judgment obtained by fraud or collusion, even it seems a judgment of the House of Lords, may be treated as a nullity." In view of this decision the court has jurisdiction to decide the question of fraud or collusion made in a former suit in obtaining the decree and issue an injunction restraining the execution in appropriate cases.

In *Kunja Behari Chakraborty* v. *Krishnadhan Majumdar* (44 C.W.N. 912) the Division Bench of the Calcutta High Court has held that to sustain an action for setting aside a decree the fraud alleged and proved must be actual positive fraud and intentional contrivance to keep the parties and the court in ignorance of the real facts of the case and obtaining that decree by that contrivance. But non-service of summons is no ground for setting aside an exparte decree passed in the earlier suit. (*K. C. Kayal* v. *A. C. Haldar*, 86 C.W.N. 100). The power of Court as provided in Order 39, rule 2, C.P.C. is not exhaustive provision in the matter of granting injunction. The power to protect the interest of the litigants can also be invoked under section 151, C.P.C. (*Manohar Lal* v. *Seth Hira Lal*, A.I.R. 1962 S.C. 527). Under the provisions of section 44 of the Evidence Act a party has been expressly permitted to set up the invalidities of certain judgments and decrees under specified circumstances. It cannot therefore be said that a defendant happens to be a decree-holder and further by the fact that he seeks to exerute the same, the court cannot pass injunction (*Narayanrao* v. *Waman*, A.I.R. 1974 Bom. 319).

A Court of first instance may review its own decree and order or stay the execution of its own decree.[42] Execution of a decree is not stayed solely by reason of an appeal, but, if an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed, provided it is satisfied that substantial loss may result to the party applying for stay of execution unless the order is made, that there has been no unreasonable delay, and that security has been given

42. *See* Civ. Pr. Code, *O.* 41, r. 5.

CENTRAL LIBRARY

by the applicant.[43] The usual course is to stay proceedings pending an appeal only when the proceedings would cause irreparable injury to the appellant. Mere inconvenience and annoyance is not enough to induce the Court to take away from the successful party the benefit of his decree.[44] The Court may, however, stay the execution of a decree and suspend the operation of an injunction given thereby, if there be danger of irreparable mischief being done in the meantime.[45]

(ii) Courts of Appellate Jurisdiction.—The Appellate Court has the same power in respect of granting an Injunction which the Court of original jurisdiction has. If therefore a party whose suit has been dismissed desires to have any measure taken for the preservation of the property or right which he claims, he is at liberty after filing his appeal to apply to the Appellate Court, which has authority to make such an order and which will, in a proper case, restrain the act complained of pending the determination of the appeal.[46] The injunction may be issued either in regular,[47] or special,[48] appeal. In granting an injunction the Appellate Court will be influenced by those circumstances which weigh with Courts of Original Jurisdiction in entertaining applications of the same kind. It will consider amongst other things whether there is a danger of multiplicity of proceedings and whether any practical injury will be caused by the issue of an order.[49] It is, however, apprehended that, having regard to the fact that there has been an adjudication upon the legal right in the decree appealed from, the issue of injunctions by Appellate Courts will be confined within strict limits and only to clear cases where otherwise irreparable damage would ensue, upon principles similar to those which regulate the stay of execution of decrees. The Court may further safeguard the interests of the party against whom the order is made by making the issue of the injunction dependent on security being given by the applicant.[50]

As in the case of Original Courts, a Court of Appeal may in a proper case review its own decree or order,[51] and may for sufficient cause order the execution of decrees passed by subordinate Courts to be stayed pending the

---

43. Civ. Pr. Code, *O.* 41. r. 5 ; as to security in case of order for execution of decree appealed against, see *O.* 41, r. 6, z, *ib.*

44. *Walford* v. *Walford*, L. R. 3 Ch. App., 812, 814, *per* Sir W. Page Wood L. J.

45. *Ib.*; *Rorkell* v. *Whitworth*, 19 W. R. (Eng.), 804, 807. See, Halsbury's *Laws of Enlgand*, (4th ed.), Vol. 24, para 933.

46. *Shaikh Moheeooddeen* v. *Shaikh Ahmed Hossein*, 14 W. R. 384, 385 (1870) *Gossain Money Puree* v. *Guru Pershad Singh*, 11 C., 146, 149 (1884) ; *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80 (1887) ; *Wilson* v. *Church*, 11 Ch. D., 576 ; *Kanahi Ram* v. *Biddya Ram*, 1 A., 549, 551. note (1878). *See* Civ. Pr. Code, *O.* 22. r. 11 ; *O.* 44. r. 1 & 3 as amended by Act 104 of 1976.

47. *Kirpa Dayal* v. *Rani Kishori*, supra.

48. *Kanahi Ram* v. *Biddya Ram*, supra.

49. *Kirpa Dayal* v. *Rani Kishori*, supra.

50. *Kirpa Duyal* v. *Rani Kisrori*, 10 A., 80 (1887) ; and *see* O 39, Civ. Pr. Code as amended by Act 104 or 1976.

51. *See* Civ. Pr. Code, *O* 47. as amended by 104 of 1976.

CENTRAL LIBRARY

hearing of the appeal.[52] When there has been no application for a stay of execution, or if such an application be refused, the appeal may yet be advanced. So an appeal from a decree granting an injunction to restrain the use of a trade-mark was orderd to be advanced, on the ground that the injury done to the defendant by the continuance of the injunction, if wrongly granted, would be irreparable.[53] If a Receiver has been appointed but the facts proved only warrant the issue of an injunction, the Appellate Court will set aside the order appointing a Receiver and in lieu thereof will issue an Injunction.[54] An appeal from a final Injunction does not suspend its operation, and the doing of the act enjoined may be punished as a contempt notwithstanding such appeal. But when an interlocutory injunction is granted upon the filing of the bill, but the bill is dismissed upon the hearing and plaintiffs thereupon appeal, the appeal does not have the effect of reviving the injunction; and defendants are not therefore liable for contempt in doing the act, which had been originally enjoined, pending such appeal.[55]

(iii) Courts of Revisional Jurisdiction.—The High Court may call for the record of any case in which no appeal lies to the High Court. if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested,or to have acted in the exercise of its jurisdiction illegally, or with material irregularity; and may pass such order in the case as it thinks fit.[56] And so when an applicant obtained a rule to show cause why an order of injunction should not be set aside on, amongst others, the grounds that it had been made and issued without jurisdiction; the High Court made the rule absolute with costs, setting aside the order of injunction complained of.[57] And so also where a petition praying for a temporary injunction in a suit was presented by the plaintiff in a subordinate Court, but the Judge having refused to pass orders on it without hearing the defendants, and having ordered notice to issue to them, the plaintiff appealed to the District Judge, who granted the Injunction prayed for: it was *held* upon revision that no appeal lay from the subordinate Court, and that the District Judge had purported to exercise a jurisdiction not vested in him by law, and the order was set aside.[58]

25. Enforcement of orders and decrees issuing Injunction.—Assuming that in any particular case the Court has jurisdiction to grant relief, and that the circumstances are such that it would be a proper exercise of its discretion to do so, and that it has in fact done so either by ordering an injunction to issue or a Receiver to be appointed, it remains to be considered how these orders are enforced and made effectual to secure the redress sought by those in whose favour they are made. A judgment of the Court which is *in personam* may be

---

52. *Ib., O.* 41, *r.* 5 as amended by Act 104 of 1976.
53. *Lazenby* v. *White*, L. R., 6 Ch. App., 89.
54. *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459 (1895).
55. High, Inj., §143.
56. *See* Civ. Pr. Code, s. 115.
57. *Gossain Money Puree* v. *Guru Pershad Singh*, 11 C., 146 (1884), *supra*.
58. *Luis* v. *Luis*, 12 M., 186 (1888).

CENTRAL LIBRARY

enforced by process *in personam*, that is, by attachment of the person, when the person is within the jurisdiction, or by sequestration of the goods or lands of the defendant, when these are within the jurisdiction of the Court, until the defendant does comply with the judgment or order of the Court.[59] This power of attachment, which has been termed the keystone of the equitable jurisdiction, results from the first principles of judicial establishments and must be an inseparable attendant upon every superior tribunal. Under the authority conferred by the Charters of the Supreme Courts and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by attachment for contempt,[60] and they had all the powers of a Court of Equity in England for enforcing their decrees *in personam*.[61] The jurisdiction of the High Court to imprison for contempt is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain, and this jurisdiction has not been removed or affected by the Civil Procedure Code.[62] The question as to the power of the Mofussil Courts to commit for contempt otherwise than under the authority of special statutory enactments conferring, or of case-law recognising, that power, which was formerly considered to be a matter of doubt,[63] has been dealt with by the Madras High Court which has held that a District Court is not a Court of Record, and, as such, has no inherent power to commit for contempt. The jurisdiction which a District Court has to commit in case of disobedience to an Injunction is conferred by Order 39 of the Code of Civil Procedure, but the powers conferred by that Order are only exercisable when the Court is put in motion by a party who deems himself aggrieved.[64]

26. Effect and operation of an Injunction.—An injunction operates from the date of the order being made and not from the time of the sealing of the writ or even from the time of its being drawn up ; and a party who has notice of an order is bound by it from the time it is pronounced.[65] The operation and effect of a final injunction is to perpetually inhibit the defendant from the com-

---

59. *Penn* v. *Lord Baltimore*, 1 Ves. 444 ; v. *ante*.

60. *Hassonbhoy* v. *Cowasji Jehangir Jassawalla*, 7 B., 1 (1881) ; *Navivahoo* v. *Narotamdas Candas*, 7 B., 5 (1882).

61. *H. H. Shrimant Maharaj Yashvantrav Holkar* v. *Dadabhai Cursetji Ashburner*, 14 B., 353, 359 (1890) ; *per* Sargent, C. J., citing *Martin* v. *Lawrence*, 4 C., 655 (1879) ; *Hassonbhoy* v. *Cowasji Jehangir Jassawalla*, 7 B., 1 (1881). As to the practice of the English Courts in the case of the breach of an Injunction, v. *post*.

62. *Martin* v. *Lawrence*, 4 C., 655 (1879), *per* White, J ; *Hassonbhoy* v. *Cowasji Jehangir Jassawalla*, supra, at p. 4 ; *Navivahoo* v. *Narotamdas Candas*, supra, at pp. 12, 13.

63. See *Hassonbhoy* v. *Cowasji Jehangir Jassawalla*, supra at p. 3 ; *Navivahoo* v. *Narotamdas Candas*, supra, at pp. 13, 14.

64. *Kochappa* v. *Sachi Devi*, 26 M., 494 (1902) See, Or. 39, r. 2A, C.P.C.

65. *Gooch* v. *Marshall* (1860)8 W.R. 410. See Halsbury's *Laws of England*, (4th ed.) Vol. 24, para 1099.

CENTRAL LIBRARY

mission of the act enjoined, and of an interlocutory injunction to prohibit the commission of a particular act during the period mentioned in the order. An injunction generally only protects the plaintiffs named in the record ;[66] and persons not named in the order of injunction are not liable to be committed for a breach, though if with notice of the Injunction they do acts in violation thereof, they may be committed for contempt.[67] The violation of a subsisting injunction, however erroneous, made with jurisdiction will render the offender liable to be committed for contempt ;[68] but a defendant who is charged with a breach may show that the order has expired.[69] An undertaking entered into with the Court is equivalent to and will have the effect of an injunction so far that any infringemnet thereof may be made the subject of an application to the Court.[70] It is no breach of an injunction for a person not a party to the suit, and who has not acquired a right *pendente lite* from any one as a party, to exercise a right which he had antecedently to the suit.[71] In determining whether the operation of an injunction has been interfered with regard must be had to the terms of the injunction itself. As an order for commitment will not be sustained unless it can be shown that there has been a breach of the injunction,[72] so if the injunction be in general terms restraining a defendant from permitting a certain injurious effect to be produced by a given cause (but not restraining any definite act) the Court must be satisfied that the injury complained of was produced by the cause assigned.[73] But the general terms of an injunction will not be restricted by reference to the particular nature of the injury complained of, if it has been in spirit as well as in terms violated.[74] The Court will not permit defendants to evade responsibility for violating an injunction by doing through subterfuge that which while not in terms a violation, yet produces the same effect by accomplishing substantially that which they were enjoined from doing.[75]

An appeal from a final injunction does not suspend its operation ; nor where an interlocutory injunction has been granted in a suit which is ultimately

---

66. *Lund* v. *Blanshard*, 4 Hare, 290

67. *Wellesley* v. *Mornington*, 11 Beav., 180; *Nilmadhab Mundul* v. *Mr. W. F. Gillander*, 2 Sevestre, 951, 954 (1863) ; v. *post*.

68. v. *post*.

69. *Daw* v. *Eley*, 3 Eq., 496.

70. *London & Birmingham Ry. Co.* v. *Grand Junction Canal Co.*, 1 Ry. Cas., 224, 241 ; *Att.-Gen.* v. *Manchester and Leeds Ry. Co.*, *ib.*, at p. 436 ; *Att.-Gen.* v. *Boyle*, 10 Jur. N. S., 309 ; *Lawford* v. *Spicer*, 2 Jur N. S., 564 : but the Court will not enforec an undertaking given by mistake; *Mulkins* v. *Howell*, 11 Ch. D., 763.

71. *Bottle* v. *Stanley*, 2 Eq Ca., Ab., 528; and *Iveson* v. *Harris* ; 7 Ves. 256. So a stranger to the cause who is unconnected with the parties defendant, will not be liable for doing the act prohibited by the Injunction. *Boyd* v. *State*, 19 Neb., 28 (Amer.) ; but *see* also *Avory* v. *Andrews*, 30 W. R. (Eng.), 564.

72. *Mann* v. *Stephens*, 15 Sim., 377 ; *Dawson* v. *Paver*, 5 Hare ; 424.

73. *Dawson* v. *Paver*, 5 Hare, 524.

74. *Att.-Gen.* v. *Great Northern Ry. Co.*, 4 DeG. & Sm., 75.

75. *Gibbs* v. *Morgan*, 39 N. J. Eq., 79 (Amer.) ; and see *Loder* v. *Arnold*, 15 Jur., 117 ; *Grand Junction Canal Co.* v. *Dimes*, 17 Sim., 38; v. *post*.

CENTRAL LIBRARY

dismissed, does the appeal have the effect of reviving the injunction.[76] An injunction is not retroactive in effect, and a person who has been enjoined will not be held liable for contempt for the doing of any act before suit brought or Injunction granted.[77] An injunction irregularly or erroneously issued is voidable only, but an injunction granted by a Court without jurisdiction is wholly void.[78] An injunction however regularly issued, has no effect in altering the right of property.[79] So where an Injunction was issued against a person prohibiting her from parting with a taluk in which she had a beneficial interest until the further orders of the Court but she subsequently and during the continuance of the injunction executed a *putni* and *ijarah* of the property, it was held that the *putni* and *ijarah* were not void by reason of their having been made *pendente lite* or otherwise, but were operative as against herself and to the extent of binding all the interest she possessed in the property. As against all the world they passed the legal estate in the property, though the grantees taking no greater interest than she had, or might have, held it subject to the rights and equities of the parties to the suit in which the property was in dispute and in which the injunction was made. The property in such a case is not *in custodia legis* as it would be if attached and placed in the possession of a Receiver.[80] The Code in providing a specific penalty for the breach of an injunction,[81] does not provide that one of the penalties which result from the infringement of an injunction, is that any dealing with property, the subject of such an Injunction, contrary to the terms of the Injunction, is illegal and void.[82]

27. Breach of an Injunction.—Order 39, rule 2A of the Code of Civil Procedure provides for consequences of disobedience or breach of injunction granted under rule 1 or rule 2 of Order 39, C.P.C. Under Order 39 rule 2A the Court granting the injunction or any court to which the suit or proceeding is transferred may order for attachment of the property or detention in civil prison for a term not exceeding three months of the person guilty of such disobedience or breach of injunction.

In *State of Bihar* v. *Rani Sonabati Kumari* (A.I.R. 1954 Pat. 513) it has been held that the State is also liable for contempt of court for deliberately disobeying the order of injunction passed against it. It has been further held that two modes of punishment, namely, attachment and detention in civil prison are the only atternatives. This decision has been affirmed by the Supreme Court in *State of Bihar* v. *Rani Sonabati Kumari* (A.I.R. 1961 S.C. 221). Thus, in *Kapildeo* v. *Raghunath* (A.I.R. 1978 Pat. 212) it has been held that it is discretionary for the court either to order for attachment of property or to direct the person concerned to be detained in civil prison for disobedience of injunction order.

---

76. v. *ante*.
77. *People* v. *Albany & V. R. Co.*, 12 Ab. Pr., 171 ; *Witter* v. *Lyon*. 34 Wis., 564 (Amer.); High, Inj., § 1447.
78. v. § 27.
79. *Nilmadhub Mundul* v. *Mr. W. F. Gillander*, 2 Sevestre, 951. 955 (1863).
80. *Nilmadhub Mundul* v. *Mr. W. F. Gillander*, 2 Sevestre, 951, 955 (1863).
81. Civ. Pr. Code, *O.* 39.
82. *The Delhi and London Bank* v. *Ram Narain*, 9 A., 497. 499 (1887).

CENTRAL LIBRARY

Before the insertion of rule 2A in the Code of Civil Procedure by the Amendment Act No. 104 of 1976 there were conflicting views of different High Courts on the power of a transferee court to exercise jurisdiction for imposition of punishment for breach of injunction.[83] Now the controversy has been removed by insertion of Rule 2-A which provides that the transferee court has also the power to punish for breach of injunction.

A person guilty of disobedience to an order of injunction may be punished under Order 39, rule 2A of the Code of Civil Procedure and also under the Contempt of Courts Act, 1971. It has been held by the Division Bench of the Calcutta High Court in *Calcutta Medical Stores* v. *Stadmed (P) Ltd.* (81 C.W.N. 209) that violation of order of injunction constitutes disobedience of an order of a court, subordinate to the High Court. If such violation is wilful, it may constitute civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971 (Act 70 of 1971) and the High Court is invested with powers to take action for such contempt. But civil contempt is by its very nature remedial and its primary object is to enforce the order for the benefit of the party in whose favour the order is made. Thus, where the law otherwise specifically provides a remedy under O 39, rule 2(3) of the Code as amended by Act 104 of 1976, the High Court should not encourage by-passing such remedy by initiating proceeding under the Contempt of Courts Act, 1971.

Section 12 of the Contempt of Courts Act, 1971 provides for punishment for contempt of Court. A contempt of court may be punished with simple imprisonment for a term not exceeding six months, or with fine not exceeding two thonsand rupees or with both. But the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. It has been clarified by way of an explanation to section 12(1) of the Act that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bonafide.

Contempt of court is disobedience to the court by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order ; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. [Vide 17 Corpus Juris Secundum, pp 5-6; *Contempt* by Edward N. Dongel (1939) Edn. p. 14; Oswald's *Contempt of Court* (1910) Edn. pp 5—6]. The Supreme Court of India refering to the above principle held in *B. Mishra* v. *B. Dixit* (A.I.R. 1972 S.C. 2466) that the High court was justified in finding the appellant guilty of contempt of court and admonishing him in open court and directing him to pay 300/- as costs of the proceedings. In *Pushpaben* v. *Narandas* (A.I.R. 1979 S.C. 1536) the Supreme Court has held after careful and close examination of sec. 12(3) of the Contempt of Courts Act, 1971 that a sentence of fine alone should be imposed in

---

83. *Abu Bakker* v. *Parimal Prova*, A.I.R. 1962 Cal 519 (A transferee court had no power). For contrary view see, *Shashank* v. *Naraindas*, A.I.R. 1973 M.P. 303.

CENTRAL LIBRARY

normal circumstances. The statute, however, confers special power on the court to pass a sentence of imprisonment if it thinks that ends of justice so require. In *Baradakanta* v. *Registrar, Orissa High Court* (A.I.R. 1974 S.C. 710) the Supreme Court in a criminal contempt imposed a sentence of fine of Rs. 1,000/- in substitution of the infliction of imprisonment by the High Court. In *Advocate General, Bihar* v. *M. P. Khair Industries* (A.I.R. 1980 S.C. 946) the Supreme Court has held that where the conduct of the respondents is so reprehensible as to warrant condemnation by imposition of sentence, unconditional apology will not be sufficient. In *Mulkh Raj* v. *State of Punjab* (A.I.R. 1972 S.C. 1197) it has been held by the Supreme Court that apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of pertinence. If apology is offered at a time when the contemner finds that the court is going to impose punishment, it ceases to be an apology. The elementary basis of acceptance of apology is that there is to be a finding of committal of contempt. In absence of any finding of any contempt of court, there can not be any occasion for acceptance of apology. (*Ram Pratap* v. *Daya Nand*, A.I.R. 1977 S.C. 809). Acceptance of apology by the court should be regarded sufficient to purge the contempt (*M. G. Gupta* v. *Agra University*, A.I.R. 1974 All 39 ; *Shareef* v. *Judges of Nagpur High Court*, A.I.R. 1955 S.C. 19).

Section 94(c) of the Code of Civil Procedure provides that in order to prevent the ends of justice from being defeated the Court may, if it so prescribed by rules to grant temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold. In *Hiralal* v. *Popatlal* (A.I.R. 1969 Guj. 28) it has been held that a combined reading of section 94 and Order 39, rules 1 and 2, C.P.C. leads to the conclusion that punishment prescribed by sub-rule (3) [now sub-rule (2A)] was drafted somewhat inartistically but the intendment of legislature appears to be clear, namely to punish persons guilty of violation of injunction issued under either of the two rules.[84]

Section 95(2), C.P.C. bars a suit in case of an application made for compensation for obtaining arrest, attachment or injunction on insufficient grounds. Section 95(1), C.P.C. confers the right on the defendant who may apply to the court, and the court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury (including injury to reputation) caused to him. There are conflicting views of different High Courts on the question of 'injury' appearing in section 95(1), C.P.C. before the Amendment Act 104 of 1976. The Bombay,[85] Kerala,[86] Madhya Bharat,[87] and Madras,[88] High Courts have held that no special or general

---

84. See, *Adaikkala Thevan* v. *Imperial Bank*, A.I.R. 1926 Mad. 574 ; *Jang Bahadur Singh* v. *Chabila Koiri*, A.I.R. 1936 Pat. 23; *Sitaram* v. *Lachminarain*, A.I.R. 1946 Pat. 47.

85. *Parikh Jivanlal* v. *Shah Chitalal*, A.I.R. 1960 Bom. 326.

86. *Subrayan* v. *Kochuvarkey*, A.I.R. 1959 Ker 18.

87. *B. K. Choudhury* v. *P. V. Bhagwat*, A.I.R. 1953 M.B. 247.

88. *Srinivasaraghavan* v. *Sundararajan*, A.I.R. 1955 Mad. 552.

CENTRAL LIBRARY

damage is required to be proved for injury. On the other hand, the Calcutta[89] and Mysore[90] High Courts have held that the term 'injury' does not include mere humilation and loss of prestige. But now by the Amendment Act 104 of 1976 has made it clear that the word 'injury' includes also injury to reputation.[91]

28. Compensation for issue of wrongful Injunction.—A suit for compensation for injury caused by an injunction wrongfully obtained shall be brought within three years from the date when the injunction ceases.[92] An application under section 95, C.P.C. for compensation for obtaining injunction on insufficient grounds shall be made within three years from the date when the right to apply accrues.[93] In case of obtaining injunction on insufficient grounds, time will begin to run from the date when the temporary injunction is vacated or dissolved by the court granting it or by the courts on appeal or revision.[94]

---

89. *Joharmul* v. *Ishwardas*, A.I.R. 1932 Cal. 695.
90. *Seenappa* v. *Suryanarayana*, A.I.R. 1958 Mys. 136.
91. See, Objects and Reasons to clause 33 of Act 104 of 1976.
92. Limitation Act, 1963 (Act 36 of 1963), Art 90.
93. Ibid., Art. 137.
94. *Garagiah* v. *Manche Gowda*, A.I.R. 1971 Mys. 178 ; *Khalilur Rahman* v. *Syed Hussain*, A.I.R. 1961 Mad. 220.

CENTRAL LIBRARY

CHAPTER 2

INJUNCTIONS GENERALLY—(contd.)

Synopsis

29. General rules governing the grant of relief by injunction.
30. Temporary Injunctions :
(*i*) The applicant must show a fair *prima facie* case in support of the
(*ii*) And an actual or threatened violation of that rights ;
right claimed;
(*iii*) Productive of irreparable or at least serious damage ; Anantnath Dey *v.* Mackintosh;
(*iv*) His conduct must be such as not to disentitle him to assistance:
(a) It should be fair and honest;
(b) And in particular there must be no acquiescence;
(c) Or delay;
(*v*) There must be a greater convenience in granting than in refusing the Injunction;
(*vi*) And equally efficacious relief must not be obtainable by any other usual remedy except in case of breach of trust;
31. Perpetual Injunctions. American Cyanamid case.
32. Mandatory Injunctions.
33. Relief which may be given in a suit for an Injunction:
(*i*) An Injunction;
(*ii*) Damages:
(a) If the plaintiff be held entitled to damages, they must be given ;
(b) Assessment of, and enquiry as to, damages;
(*iii*) Combination of damages and Injunction.
34. If relief be given it must be of one or other of the preceding kinds.

29. General rules governing the grant of relief by injunction.—Though the exercise of the jurisdiction to grant relief by the issue of an injunction is a matter which is purely within the discretion of the Court,[1] and the latter is not bound to grant such relief merely because it is lawful to do so, yet that discretion is not arbitrary, but sound and reasonable and guided by certain fixed judicial principles.[2] As an injunction is not to be arbitrarily refused where a proper case for its issue is made out, so it is not to be granted merely on the ground that it can do no harm.[3] The remedy by injunction is no doubt a useful, but it is at the same time a very strong, remedy and one not ordinarily granted where any other remedy is fairly open to the applicant or where the conduct of the parties had been such as to make it a harsh remedy to give in a particular case.[4]

---

1. Act 47 of 1963, s. 36.
2. v. *ante*.
3. *Dunn* v. *Bryan*, 7 Ir. R., Eq., 143.
4. *Noyna Misser* v. *Rupikun*, 12 C. L. R., 300; s. c. 9 C., 609, 611 (1882).

CENTRAL LIBRARY

The power which the Court possesses of granting injunctions, whether interlocutory or perpetual (however salutary), should be very cautiously exercised, and only upon clear and satisfactory grounds; otherwise it may work the greatest injustice.[5] An application for an injunction is an appeal to the extraordinary power of the Court, and the plaintiff is bound to make out a case showing a clear necessity for its exercise; it being the duty of the Court rather to protect acknowledged rights than to establish new and doubtful ones.[6] Moreover, a temporary injunction is a restrictive or prohibitory process designed to compel the party against whom it is granted to maintain his status merely until the matters in dispute shall by due process of the Courts be determined. As such, an injunction is in its operation somewhat like judgment and execution before trial; it is only to be resorted to from a pressing necessity, to avoid injurious consequences which cannot be repaired under any standard of compensation.[7]

With such modifications as arise from the fact that an injunction is claimed before or at the conclusion of the hearing of the right, the general principles upon which temporary and perpetual injunctions are granted are the same.

In the case of temporary injunctions: (*a*) The applicant must show a fair *prima facie* case in support of the right claimed; and (*b*) an actual or threatened violation of that right; (*c*) productive of irreparable or at least serious damage; (*d*) his conduct must be such as not to disentitle him to assistance: it should be fair and honest, and in particular there must be no acquiescence or delay; (*e*) there must be a greater convenience in granting than refusing the injunction; and lastly (*f*) equally efficacious relief must not be obtainable by any other usual mode of proceeding, except in case of breach of trust. With the exception of the first, all of the above conditions apply to perpetual injunctions. In the place of the excepted condition, it is required that the legal right must be *established* before a decree for an injunction can be made. Upon the grant of perpetual injunctions, further questions arise as to the taking of accounts and the payment of costs.

30. Temporary Injunctions.—The subject-matter of a temporary injunction is the protection of legal rights *Pending litigation*. Its object is to prevent future injury, leaving matters as far as possible *in status quo* until the suit in all its bearings can be heard and determined.[8] In exercising its jurisdiction to protect legal rights to property from irreparable or serious damage pending the trial of the legal right, the Court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition

---

5. *Ware* v. *Regent's Canal Company*, 3 DeG. & J., 231, *per* Lord Chelmsford, L. C.; See *Manohar Lal* v. *Seth Hiralal*, A.I.R. 1962 S.C. 527 (The Court ordinarily should not use its inherent power to pass an order of Temporary injunction in the interests of justice but is merely to see whether the circumstances of the case bring it within the prescribed rule).
6. Hilliard, Inj., § 16.
7. Spelling's Extraordinary Relief. § 21.
8. *Stephens* v. *The Trustees of the Port of Bombay*, 1 B., 145 (1876).

CENTRAL LIBRARY

until the legal title can be established.[9] The Court interferes on the assumption that the party who seeks its interference has the legal right which he asserts but needs the aid of the Court for the protection of that right or of the property in question until the legal right can be ascertained.[10]

A temporary injunction can be granted if the case is covered by the three well-established principles, namely, (i) on making out a *prima facie* case, (ii) on showing balance of convenience in favour of the petitioner, and (iii) on refusal of injunction, the petitioner will suffer irreparable loss.*

The Court upon an application for a temporary injunction will deal with the injunction upon the evidence before it, and will confine itself strictly to the immediate object sought, and as far as possible abstain from prejudging the question in the cause.[11]

(i) The applicant must show a fair prima facie case in support of the right claimed.—An injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law) existing in favour of the applicant[12] who must have a personal interest in the matter.[13] In the first place, therefore, as interference by injunction is founded on the existence of a legal right (see 15, *ante*) an applicant must be able to show a fair *prima facie* case in support of the title which he asserts.[14] When there is a serious question to be tried in the suit, it is generally termed a *prima facie* case. *Prima facie* case means a case where there is a bona fide contentions between the parties or a serious question is to be tried.14* Being a severe remedy an

---

9. *Harman* v. *Jones*, Cr. & Ph., 299, 301; Kerr, Inj., 26.

10. *Ib.*

* *Chanlu Lal* v. *Delhi Municipaliy*, A.I.R. 1978 Del. 174 (F.B.). R. M. *Subbiah* v. *N. Sankaran Nair*, A.I.R. 1979 Mad. 56 ; *Nanibala Saha* v. *Charubala Saha*, 83 C.W.N. 844.

11. *Gopeennath Mookerjee* v. *Kally Doss Mullick*, 10 C., 225, 231 (1883) ; *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 466 (1895); Kerr, Inj., 24 ; *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 357 (1875).

12. Act 47 of 1963, ss. 37. 38.

13. *Ib.*, s. 41 (j).

14. *Mir Barket* v. *Zulfiquar*, A.I.R. 1975 A.P. 187: *Anil Kumar* v. *Kashinath*, 1982 M.P.W.N. 347 (Prima facie case, balance of convenience and irreparable injury are to be proved): *State* v. *Orissa* Oil *Industries* AIR 1982 Ori. 245): *The Archdiocess of Hyderabad* v. *Dr. J. Jaswanthantha Rao*, (1982)2 Andh. W.R. 16 (Mere filing of undertaking does not prove prima facie case). *Saunders* v. *Smith*, 3 M. & C., 714, 728; *Hilton* v. *Lord Granville*, Cr. & Ph., 283, 292; Kerr, Inj., 26. Joyce's Doctrines, 27. A clear right free from reasonable doubt must be satisfactorily shown. Hilliard. Inj., § 16. *Krishna Chandra* v. *Hem Chandra*, 21 C. L. J., 469 (1915) ; *Begg Dunlop* v. *Satischandra*, 46 C., 1001 (1919); 23 C.W.N., 677; 29 C.L.J., 584. See Halsbury's *Laws of England*, (4th ed.), Vol. 24, para 955 (The test is whether there is a serious question to be tried).

14a. *B. S. Augla Co. (P) Ltd.* v. *Kaluram Mahadeo Prasad*, A.I.R. 1983 Cal. 106 ; see *United Commercial Bank* v. *Bank of India*, A.I.R. 1981 S.C. 1426 (No injunction would be granted under Or. 39, rr. 1 and 2, C.P.C. unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona-fide contention between the parties or a serious question to be tried).

CENTRAL LIBRARY

injunction will not be granted in the first instance except upon a clear *prima facie* case and upon positive averments of the equities on which the application for the relief is based. The complainant must allege positively the facts constituting his grounds for relief, although it is not essential that he should establish his case, upon an application for an interlocutory injunction, with the same degree of certainty that would be required upon the final hearing. Mere argumentative allegations or inferences from the facts stated do not suffice to meet the requirements of the rule requiring allegations to be specific, and the relief will not ordinarily be allowed where the facts upon which the complainant's equities rest are stated only upon information and belief.[15] Upon an application for an interlocutory injunction, the Court will not, however, decide which of the parties is right in their statement of facts. Looking at all the facts of the case it will consider whether it is right that the applicant should suffer the alleged threatened injury whilst his rights are being investigated. Of course, if he has no rights *cadit quastio*. But if his statement of facts is true and raises a fair and substantial question to be decided as to what the rights of the parties are, then the Court will issue the injunction,[16] though in doing so it will not assume that he has the right which he claims, nor that the defendant is justified in saying that that right does not exist.[17] An applicant is not required to make out a clear legal title, but to satisfy the Court that he has a fair question to raise as to the existence of the legal right which he sets up,[18] and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent.[19] The Court must, before disturbing any man's legal right, or stripping him of any of the rights with which the law has clothed him, be satisfied that the probability is in favour of his case ultimately failing in the final issue of the suit.[20] The mere existence of doubt, however, is in itself insufficient to prevent the Court from granting an injunction The circumstance of the legal right being in doubt is a matter for serious attention ; but does not render it incumbent on the Court to refuse an Injunction. The Court must be guided by a discretion according to the exigencies and the nature of each particular controversy.[21] The Court must in this as in other matters proceed upon probabilities ; nor is a contradiction upon the facts in itself a bar to the issue of an *interim* injunction. In a large number of cases, *interim*

---

15. Spelling's Extraordinary Relief, § 25; v. ib., § 20; Hilliard, Inj., §§ 45, 52. Thus it is well established that the mere allegation of irreparable injury will not be sufficient, but the facts must appear on which the allegation is predicated in order that the Court may be satisfied as to the nature of the injury. *Branch* v. *Supervisors*, 13 Cal., 190 (Amer.): High, Inj., §§ 34. 35.

16. *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352, 357 (1875), *per* Markby, J. ; *Gomes* v. *Carter*, 1 Ind. Jur. N. S. 411, 412 (1866).

17. *Moran* v. *River Steam Navigation Company*, supra.

18. *Chandidat Jha* v. *Padmanad Singh Bahadur*, 22 C., 459, 464, 465 (1895); *Shrewsbury and Chester Railway Company* v. *Shrewsbury and Birmingham Railway Company*, 1 Sim., N. S., 410, 426 ; *Begg Dunlop* v. *Satischandra* 46 C. ; 1001 (1919)

19. *Sparrow* v. *Oxford, Worcester, and Walverhampton Railway Company*, 9 Ha., 436, 441 ; Kerr, Inj., 11, 12.

20. Kerr, Inj., 17 ; *Atty-Gen.* v. *Mayor of Wigan*, 5 D. M. & G., 52.

21. *Ollendorf* v. *Black*, 4 DeG & S., 209, 211.

CENTRAL LIBRARY

injunctions issue simply in order to keep parties *in status quo* while these rights are being determined, and there is generally a conflict upon the facts out of which these rights arise.[22] A probability of right is sufficient to sustain an injunction.[23] The Court will, in many cases, interfere to preserve property *in status quo* during the pendency of a suit in which the rights to it are to be decided, and that, without expressing, and often without having the means of forming, any opinion as to such rights; it is true the Court will not interfere if it thinks that there is no real question between the parties, but if it sees that there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of; and in order to support an injunction for such purpose it is not necessary for the Court to decide upon the merits in favour of the plaintiff; if the plaint states a substantial question between the parties the title to the injunction may be good, although the title to the relief prayed may ultimately fail.[24]

Upon the question of proof of title a clear distinction must be drawn between applications for an injunction and for a Receiver. In the former case, it is sufficient if it be shown that the plaintiff has a fair question to raise as to the existence of the right alleged, while in the latter case, a good *prima facie* title has to be made out.[25]

The right to relief by injunction is not excluded by the fact that a penalty has been imposed by Statute securing that right;[26] nor, in suits on contracts, because the contract provides for a penalty for its non-performance.[27]

(ii) And an actual or threatened violation of that right.—Assuming that the applicant has shown a fair and substantial *prima facie* case to be tried as to the existence of the legal right, or assuming that the right is not disputed, but the fact of its violation is denied, the plaintiff must further establish that there is an actual[28] or threatened[29] violation of that right. To entitle a person

---

22. *Per* Marky, J., in *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 357 (1875). But when the plaintiff's moving allegations are denied in such a manner as to leave their truth in serious doubt, the application for an Injunction will be in general denied. Beach, Inj., § 20.

23. *Tonson* v. *Walker*, 3 Sw., 679; *Nagendra* v. *Probal*, 17 C. W. N., 964 (1912).

24. *Great Western Railway Co.* v. *Birmingham and Oxford Junction Railway Co.*, 2 Phill., 597; Joyce's Doctrines, 29.

25. *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 464, 465 (1895), citing Kerr, Rec., 3, 4; Kerr, Inj., 10, 11.

26. *Hayward* v. *East London Water-works Company*, 28 Ch. D., 139, 146.

27. *Madras Railway Company* v. *Rust*, 14 M., 18, 22 (1890).

28. Kerr, Inj., 17; *Ripon* v. *Hobart*, 3 M. & K., 169, 176; *Tipping* v. *Eckersley*, 2 K. & J., 264; *Imperial Gas Company* v. *Broadbent*, 7 H. L., 600; *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., 257 (1889).

29. *Ib. Bindu Basini Chowdhrani* v. *Jahnabi Chowdhrani*, 24 C., 260 (1896); *Kalidas Jivram* v. *Gor Parjaram Hirji*, 15 B., 309 (1890); see Act I of 1877, s. 54 ["invades or *threatens* to invade"]. *Atty.-Gen.* v. *Forbes*, 2 M. & C., 123, 132; *Hext* v. *Gill*, 7 Ch., 700; *Tipping* v. *Eckersley*, supra; *Cooper* v. *Whitingham*, 15 Ch. D., 501; *Atty.-Genl.* v. *Acton Local Board*, 22 Ch. D., 221; *Shafto* v. *Bolchow, etc. Co.*, 56 L. J., Ch., 735.

CENTRAL LIBRARY

to an interlocutory injunction, it is not necessary that a wrong should have been already committed. A Court of Equity will not require that which would in most cases defeat the very purpose for which the relief is sought by allowing the commission of the act which it is sought to restrain. Satisfactory proof that the defendant threatens the commission of a wrong which, it is within the power of the Court to prevent, constitutes a sufficient ground to justify interference.[30] There is some conflict of views as to what imminency of irreparable injury must be shown to entitle a party to an injunction, as well as to the true meaning of the term. An injunction is never granted except for substantial reasons founded on actual interest.[31] An injunction is not justified by the fact that, if there be no intention on the part of the defendant to do the acts feared, the injunction can do no harm.[32] The evidence must show a probability of the defendant doing the act which it is sought to restrain.[33] To warrant the Court in granting or continuing an injunction, it must be reasonably satisfied that there is an intention on the part of the defendant to do the acts sought to be restrained, or, at least, that there is probable ground for believing that, unless the injunction is granted, there is danger of such acts being done.[34] A plaintiff who complains, not that an act is an actual violation of his right, but that a threatened or intended act, if carried into effect, will be a violation of the right, must show that such will be an inevitable result. It will not ;do to say that a violation of the right may be the result ; the plaintiff must show show that a violation will be the inevitable result.[35]

Where a threatened act is such that injury will inevitably follow, a Court may grant a perpetual injunction restraining the continuance of that act even though no damage has actually accrued before institution of suit ; and where actual injury has occurred subsequently to the filing of the plaint, the plaint may be amended so as to show the nature and extent of such injury. The term "inevitably" is used not in the sense of there being no possibility the

---

30. Spelling's Ertraordinary Relief, §18 ; High, Inj., § 18. See Halsbury's *Laws of England*, (4th ed.), vol. 24 (para 954) [An interlocutory injunction will be granted to restrain an apprehended or threatend injury where the injury is certain or very imminent, or where mischief of an overwhelming nature is likely to be done, especially destructive operations.). If there is a prospect of irremediable injury, even though the title or right is disputed, a temporary injunction ought to be granted at once without waiting until a trial at law is had (43 C.J.S. § 20a).

31. Spelling's "Extraoridnary Relief," § 18 ; High, Inj., § 18 ; as to interest, see Act 47 of 1963, s 41 (j).

32. *Dunn* v. *Bryan*, 7 Ir. R., Eq., 143.

33. *Cowley* v. *Byas*, 5 Ch. D., 944. *Ramjas Agharwalla* v. *Brajo Mohan*, 19 C. W. N., 887 (1914): 20 C. L. J., 538.

34. *Dunn* v. *Bryan*, supra.

35. *Pattison* v. *Gilford*, L. R., 18 Eq., 256, 263; following in *Bindu Basini Chowdhrani* v. *Jahnabi Chowdhrani*, 24 C., 260 (1896) ; see also *Haines* v. *Taylor*, 10 Beav., 471 ; *Goodhart* v. *Hyett*, 25 Ch. D., 190. A mere possibility, or anything short of a reasonable probability of injury, is insufficient to warrant an injunction; *Lorenz* v. *Waldron*, 96 Cal., 243 (Amer.), cited in Beach, Inj., § 17.

CENTRAL LIBRARY

other way, but in the sense that there must be such great probability, that, in the view of ordinary men using ordinary sense, the injury would follow.[36]

It is not sufficient that the complainant apprehends or fears the commission of prejudicial acts by the defendant, since there may in fact, be no substantial grounds therefor ; facts establishing the probability of the commission of such acts, unless defendant be restrained, are necessary.[37] The rule upon this point has been summarised as follows[38] :—

The mere *prospect* or *apprehension* of injury, or the mere belief that the act complained of may or will be done, is not sufficient ;[39] but if an *intention* to do the act complained of can be shown to exist, or if a man *insists* on his right to do, or *begins* to do, or *threatens* to do or *gives notice* of his intention to do, an act which must, in the opinion of the Court, if completed, give a ground of action, there is a foundation for the exercise of the jurisdiction.[40] But the Court will not interfere where there are not sufficient data to prove such intention or act.[41] The mere denial by a man of his intention to do an act or to infringe a right will not prevent the Court from interfering ;[42] but if a man asserts positively that it is not his intention to do a certain act or to infringe a certain right, and there is no evidence to show any intention on his part to do the act or infringe the right.[43] the Court will not interfere.[44] Nor will the Court interfere if a man who claims a right to do a certain act asserts positively that before proceeding to do the act, he will give notice of his intention to do it ; and there is no reason to doubt the truth of his assurance.[45]

Moreover, in all cases it is to be remembered that in the exercise of the discretion given to it by the Specific Relief Act, the Court will consider not merely whether the plaintiff's right has been infringed, of even materially infringed, but also whether, under all the circumstances of the case, he ought to be granted an injunction as the proper and appropriate remedy for such infringement.[46] When an injury has already been committed,

---

36. *Binud Baasini Chowdhrani* v. *Jahnabi Chowdhrani*, 24 C., 260, 264 (1896).
37. Spelling's Extraordinary Relief. § 18.
38. Kerr, Inj., 17.
39. *Ripon* v. *Hobart*, 3 M. & K., 174 ; *Haines* v. *Taylor*, 10 Beav., 75 ; *Chabildas* v. *Municipal Commissioner of Bombay*, 8 Bom. H. C. R., 85 (1871).
40. See English cases cited *ante*.
41. *Secretary of State for India* v. *Ambalarana Pandara Sannadhi*, 34 M., 366 (1910).
42. *Jackson* v. *Cator*, 5 Ves., 688 ; *Potts* v. *Levy*, 2 Drew, 272 ; *Adair* v *Young*, 12 Ch. D., 19.
43. See *Krishna Ayyan* v. *Vencatachella Mudali*, 7 Mad. H. C. R., 60, 71(1872).
44. *Fooks* v. *Wills, Somerset and Weymouth Railway Co.*, 5 Ha., 199; *Woodman* v. *Robinson*, 2 Sim. N. S., 204 ; *Kernot* v. *Potter*, 3 D. F. & J., 447, 457.
45. *Cowley* v. *Byas*, 5 Ch. D., 950.
46. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., 488 (1894).

CENTRAL LIBRARY

and is not alleged to be *continuing*, there is no ground for an injunction.[47] The appropriate function of the writ is to afford preventive relief only, and not to correct injuries which have already been committed, or to restore to parties rights of which they have already been deprived. It is not therefore an appropriate remedy to procure relief for past injuries. If the act sought to be enjoined has already been committed, the Court will not interfere, since the granting of an injunction under such circumstances would be a useless act.[48]

(iii) Productive of irreparable or at least serious damage.—A person who sought the aid of a Court of Equity was required to satisfy the Court that its interference was necessary to protect him from irreparable, or at least serious, injury before the legal right could be established at the trial; mere inconvenience is not enough.[49] In its general sense an "irreparable injury" is one which cannot be repaired by any means accessible to individual parties or by invoking the aid of others. In its technical sense, as used in connection with the question of granting or withholding preventive equitable aid, an injury is said to be "irreparable" either because no legal remedy furnishes full compensation or adequate redress, owing to the inherent ineffectiveness of such legal remedy, or because owing to the delay incident to the prosecution of an action at law to final judgment and obtaining service therein, such judgment and process would prove fruitless of beneficial results.[50] By the term "it is not meant that there must be no physical possibility of repairing the injury; all that is meant is that the injury be a serious one, or at least a material one and not adequately reparable by damages at law;"[51] and by the terms "inadequacy of the remedy by damages" is meant that the damages obtainable at law are not such a compensation as will, in effect, though not *in specie*, place the parties in the position in which they formerly stood.[52]

---

47. *Coker* v. *Simpson*, 7 Cal., 340 (Amer.), cited in Hilliard, Inj., § 14.

48. High, Inj., § 23; Beach, Inj., § 41.

49. Halsbury's *Laws of England*, (4th ed.), vol. 24, para 955 Kerr, Inj., 18 citing *Cuddon* v. *Morley*, 7 Ha., 206; *Rigby* v. *Great Western Railway Company* 2 Ph., 50; *Elmhirst* v. *Spencer*, 2 Mac. & G., 50; *Child* v. *Douglas*, 5 D.M. & G., 741; *Dyke* v. *Taylor*, 3 D. F. & J., 467; *Atty.-Genl.* v. *Sheffield Gas Co.*, 3 D. M. & G., 304; *Johnson* v. *Shrewsbury and Birmingham Railway Co.*, ib. at p. 931.

50. Spelling's Extraordinary Relief, § 13. See Halsbury's *Laws of England*, (4th ed.) vol. 24. para 926 (By "irreparable injury" is meant injury which is substantial and could never be adequately remedied or atoned by damages not injury which cannot possibly be repaired). An injury is irreparable when it cannot be adequately compensated in damages, and it is not necessary that the pecuniary damage be shown to be great (43 C.J.S. § 28).

51. *Begg Dunlop* v. *Satischandra*, 46 C., 1001 (1919): *Pinchin* v. *London and Blackwall Railway Co.*, 5 D. M. & G., 860. *See* Kerr, Inj., 14; *Ripon v. Hobart*. 3 M. & K., 175; *East Lancashire Railway Co.* v. *Hattersley* 8 Ha., 90; *Atty.-Genl.* v. *Sheffield Gas Co.*, 3 D. M. & G., 304, 320; *Bloxam* v. *Metropolitan Railway*, 3 Ch. 354.

52. *Wood* v. *Sutcliffe*, 2 Sim. N. S., 165. See *Riley* v. *Halifax Corporation* (1907), L. T., 278. This statement was adopted as explanatory of the term "adequate relief" in s. 54, cl. (*c*) of the Specific Relief Act, in *Ghanasham Nilkant Nadkarni* v. *Maroba Ramchandra Pai*, 18 B., 488 (1894).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

The fact that the amount of damage cannot be accurately ascertained may constitute irreparable damage.[53] It is no objection to the exercise of jurisdiction by injunction that a man may have a legal remedy. The question in all cases is whether the remedy at law is, under the circumstances of the case, full and complete.[54]

Damage is, however, never irreparable where compensation affords a full and complete remedy.[55] Nor will an interlocutory injunction be granted to restrain a wrong which is a mere technical invasion of the plaintiff's rights and does not threaten serious injury.[56] As has been concisely said, the Court will not grant an Injunction unless *real injury* is apprehended.[57] At the same time the damage apprehended or suffered need not be such that were compensation given it would be for a large amount.[58] Nor, on the other hand, is the fact that the plaintiff would, on proof of his case, be entitled to heavy damages sufficient ground for the issue of an injunction. The question in all cases is whether the remedy by injunction is the *appropriate* remedy, a question which again depends upon another. namely, whether damages would or would not afford *adequate relief*.

Anantnath Dey v. Mackintosh.—The term "irreparable injury" may, in particular cases owing to circumstances peculiar to this country, bear a wider meaning than would be attached to it by an English Court. So where *M* obtained a decree against *B* and others (Hindus), on a title of purchase from them, for possession of an undivided moiety of a dwelling-house to the remaining moiety of which *C* (a Hindu) alleged he was jointly entitled, and that he and his family were in possession; on *M's* proceeding to obtain execution of his decree, *C* brought a suit, alleging that *M* had obtained no title under his purchase and praying for partition of the property. On an application for an *interim* injunction to restrain *M* from executing his decree pending the partition suit, the Court granted the application and observed as follows:— "Now I ought not to grant an *interim* injunction, if the mischief against which it is directed is capable of being compensated for by a money-payment or if it is not of such a kind as will cause the plaintiff irreparable damage, supposing that he has the right which he seeks to enforce in his suit. I here advisedly have recourse to the principle of 'irreparable injury,' although I am

---

53. *Cory* v. *Yarmouth and Norwich Railway Co.*, 3 Ha., 603; cf. Act I of 1877, s. 54 cl. (*b*).

54. Spelling, *loc., cit.*, quoting Joyce's Inj. *See* as to the last sentence in text: *Lumley* v. *Wagner*, 1 D. N. & G., 616.

55. *Kerrison* v. *Sparrow*, 19 Ves., 449; *Garstin* v. *Aspin*, 1 Madd., 151; *Cuddon* v. *Morley*, 7 Ha., 206.

56. Spelling, *op. cit.*, § 19.

57. *Columbus* v. *Storey*, 33 Ind., 195 (Amer)., cited in Hilliard, Inj.; § 14.

58. *Lingwood* v. *Stowmarket Company*, L. R., 1 Eq., 79. "Whilst I do not wish to encourage applications to the Court upon trivial matters, on the other hand I am far from holding out the notion that anything like large or heavy damages bust be recovered before the plaintiff can be assisted." *per* Sir W. Page Wood; V. C.; and see *Campbell* v. *Scott*, 11 Sim.. 39; *Goldsmith Tunbridge Wells Improvement Commissioners*, L. R., 1 Eq., 169; Hilliard, Inj, §§ 18; 19.

CENTRAL LIBRARY

perhaps giving to it a somewhat wider application than would be accorded to it in the English Courts of Equity on a motion of this kind, because I think that, under the circumstances of Native Society in this country, there may be such a thing as a treaspass which works a truly irreparable injury, although it does not effect a lasting alteration of the subject of enjoyment, and is such as in England might be capable of being compensated for in pecuniary damages. If in this case the question concerned simply possession, without more, of ordinary immovable property other than a family dwelling-house I see no reason why the plaintiff should not wait until he had made out his title, and be then content with the compensation which would be afforded him in respect of the defendant's misdoing, in the shape of pecuniary damages. But here *M* is seeking to obtain possession of an undivided moiety of a dwelling-house, a portion of the other moiety of which is admittedly in the rightful enjoyment of the plaintiff and his family; and certainly the plaintiff is in this position that he is entitled at any time to say that he will have his share divided off from the rest, and hat he will not live in the house jointly with any given person who may be entitled to another share in it. He has exercised this right as against *M* by saying that he will not live in the house jointly with *M*, and asking for a partition. Of course, if the parties who are jontly entitled to property cannot come to an amicable arrangement for a partition, some interval of time must elapse before a binding partition can be effected between them in the ordinary course of law. If the parties are already in joint possession, that joint possession will generally continue during this interval. But when one of the parties, as in this case, is a new-comer, a difficulty no doubt occurs. Assuming that *M* has a good title to the moiety of which he is seeking to get possession, inasmuch as an interval must elapse before a partition can be effected, the question before me becomes at any rate narrowed to this: Is *M* entitled during that interval to force himself into the family-society of the plaintiff, and to make himself, so far as it is practically possible, a member of the plaintiff's joint family in the occupation of the dwelling-house? It appears to me clearly that he is not. I think that a forced joint occupation in this fashion of an undivided dwelling-house by an intruder, even though he be an owner, against the will of the resident Hindu coparcener, amounts to a proprietary injury which the latter is not in Equity called upon to sustain, and for which pecuniary damages would not be compensation. Money alone will not in any degree set the matter right, and therefore the injury is in its character irreparable; also there can be no doubt, I think, that it is substantial enough to justify the iterference of this Court."[59]

The Specific Relief Act enacts the same rules as those in force in England, and in applying those rules the Courts in India should be guided by the decisions of the Court of Chancery which are the source from which these rules have been drawn.[60] In the case of obligations not arising from contract the

---

59. *Anantnath Dey* v. *Mackintosh*, 6 B. L. R., 571, 572, 573 (1871), *per* Phear, J.

60. *The Land Mortgage Bank of India v. Ahmedhoy Habibbhoy*, 8 B., 67 (1883). The limitation of the power to grant Injunctions created by s. 38 the Speci-

CENTRAL LIBRARY

Court may grant an injunction in cases where the defendant is trustee of the property for the plaintiff, even though compensation in money would afford adequate relief ;[61] and similarly where the injunction is necessary to prevent a multiplicity of judicial proceedings.[62] And an injunction may be granted in cases (*a*) where there exists no standard for ascertaining the actual damage caused or likely to be caused ;[63] (*b*) where pecuniary compensation would not afford adequate relief ;[64] and (*c*) where it is probable that pecuniary compensation cannot be got for the invasion or threatened invasion of the plaintiffs' right to, or enjoyment of, property.

Section 38(3)(b) of the Specific Relief Act 1963 has application to a case where there is no *possible* standard with reference to which the contemplated injury can be compensated than for example, to a case of injury to property like a house occupied by its owner in danger of being deprived of its ancient light.[65] Even if it be difficult to suppose that pecuniary damages would not afford adequate relief, it must be shown that there is some standard for ascertaining them.[66]

By the term "adequate relief" in section 38(3) (c) of the Specific Relief Act, 1963 it is probably meant such a compensation as would, though not *in specie*, in effect place the plaintiffs in the same position in which they stood before.[67] It has been said that damages are a sufficient remedy where the

---

fic Relief Act, 1963 is identical with the conditions upon which the Court of Equity in England has always asserted its jurisdiction ; *Dhunjibhoy Cowaspi Umrigar* v. *Lisboa*, 13 B., 259, 260 (1888). See *Shadi* v. *Anup Sing*. 12A., 436, 438, 439 (1889).

61. Act 47 of 1963, s. 38 (3) (a).

62. Act 47 of 1963, s. 38 (3) (d). *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*. 8 B., 91 (1883) [this clause embraces as well repeated suits by the same plaintiffs as a series by different plaintiffs] ; *Ram Chand Dutt* v. *Watson & Co.*, EL C., 220 (1887) ; *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 359 (1875).

63. Act 47 of 1963, s. 38(3) (b); *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 67 72 (1883). *Ramanadhan* v. *Zemindar of Ramnad* 16 M., 409, 410 (1893) ; *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., 489 (1894). See, s. 10(a) of Act 47 of 1963. (for specific performance).

64. Act 47 of 1963, s. 38(3) (c); *Ponnusawmi Tevar* v. *The Collector of Madura*, 5 Mad. H. C. R., 24, 25 (1869) ; *Ramanadhan* v. *Zemindar of Ramnad*, 16 M., 409 (1893) ; *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 67 (1883); *Nandkishor Balgovan* v. *Bhagubhai Pranbalabhadas*, 8 B., 95, 97 (1883) ; *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B.; 133 (1877); *G. I. P. Railway* v. *Nowroji Pestonji*, 10 B., 390 (1885). *Ranchhod Jamnadas* v. *Lailu Haribhai* 10 Bom., H. C. R., 95, 97 (1873); *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 259, 260 (1888) ; *Kalidas Jivram* v. *Gor Parjaram Hirji*, 15 B., 309, 310 (1890) ; *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai* 18 B., 488 (1894); *Kadarbhai* v. *Rahimbhai*, 13 B. 674 (1889).

65. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., 489(1894).

66. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 48 (1883).

67. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai.*, 18 B., 488 (1894), following *Wood* v. *Sutcliffe*, 21 L. J. Ch., 255.

CENTRAL LIBRARY

injury is not so serious that the property might not still remain the plaintiffs' and be as substantially useful to him as before.[68] An Injunction will be granted where relief by way of compensation would be tantamount to allowing a trespasser to purchase another man's property against that man's will.[69]

Clause (*c*) probably refers to cases where the defendant has become insolvent and the like. The (old) Specific Relief Act, 1877 contained a provision in section 12(d) with reference to specific performance where the defendant had become insolvent and gave the following as an illustration thereto. *A* transfers without endorsement but for valuable consideration a promissory-note to *B*. *A* becomes insolvent, and *C* is appointed his assignee. *B* may compel *C* to endorse the note, for *C* has succeeded to *A's* liabilities and a decree for pecuniary compensation would be fruitless.[70]

When the obligation arises from contract the Court is required to guide itself by the rules and provisions contained in Chapter II of the Specific Relief Act relating to specific performance.[71] According to those rules, specific performance may be enforced when the act agreed to be done is in the performance wholly or partly of a trust ;[72] and also in cases where (*a*) there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;[73] and (*b*) the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; there being a rebuttable presumption that the breach of a contract to transfer immovable property cannot be adequately relieved by a compensation in money and that the breach of a contract to transfer movable property can be thus relieved.[74] The same considerations therefore which would prevent the Court from giving a plaintiff a decree for specific performance will prevent it from granting an Injunction.[75]

(iv) **His conduct must be such as not to disentitle him to assis-'ance.**—An injunction cannot be granted when the conduct of the applicant - his agent has been such as to disentitle him to the assistance of the Court

---

68. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 261, 262 (1888) ; *Kadarbhai* v. *Rahimbhai*, ib. at p. 674 (1889), following *Holland* v. *Worley*, L. R. 26 Ch. D., 578, 585.

69. *Jethalal* v. *Lalbhai*, 28 B., 298 (1904).

70. Act I of 1877, s. 12, cl. (*d*) and Illustration thereto. This has been omitted from Act 47 of 1963.

71. Act 47 of 1963, s. 38(2) An injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced ; *ib.*, s. 41 (e) ; but as to injunctions to perform negative agreements, *See* s. 42 *ib.*, *Madras Railway Company* v. *Rust*, 14 M., 18, 22 (1890).

72. *Ib.*, s. 11. *See* also Act II of 1882 ss. 1, 2.

73. *Ib.*, s. 10(a).

74. Act 47 of 1963, s. 10(b), and *Explanation*. So where the right in question was an interest in immovable property an injunction was granted : *Ramanadhan* v. *Zamindar of Ramnad*, 16 M., 409 (1893).

75. *Callianji Harjivan* v. *Narsi Tricum*, 19 B., 768 (1895).

CENTRAL LIBRARY

by way of Injunction.[76] The conduct of the party who seeks the aid of rhe Court must be (*a*) fair and honest, (*b*) and in particular there must be no acquiescence, (*c*) or delay. For the jurisdiction of the Court to interfere by way of interlocutory injunctions in support of a legal title being purely equitable, it is governed upon strict equitable principles. The Court, where its summary interference is invoked, always looks to the conduct of the party who makes the application, and will refuse to interfere, even in cases where it acknowledges a right, unless his conduct in the matter is free from blame.[77]

(a) It should be fair and honest.—In accordance with a favourite maxim of equity jurisprudence that he who applies for equity must also have done it, a party applying for an injunction must come into Court with clean hands and a clear conscience. As the relief is of a purely equitable character, the plaintiff must come within the equitable conditions generally imposed upon parties asking equitable relief. The party seeking relief must not be himself at fault.[78] The applicant must satisfy the Court that his own acts and dealings in the matter have been fair and honest[79] and free from any taint of fraud or illegality,[80] that he has not put himself in the wrong;[81] or brought about the state of things of which he complains; and that he has not dealt in an unfair or inequitable manner in his dealings with his opponent or third parties.[82]

The Court will not interfere when owing to misrepresentation there

---

76. Act 47 of 1963, s. 41(*i*) ; *Faith Panton Property Plan Ltd.* v. *Hodgetts*, (1981)2 All E R. 877. (Defendant indicated by conduct that he was inclined to dispose of his assets and become bankrupt in order to defeat the order for costs. The question was whether plaintiff was entitled to injunction before taxation restraining defendant from disposing of assets. Held on analogy with the pre-Mareva practice whereby the court had power to enforce an order for costs which had not been taxed by appointing a receiver of property of the person liable for the cost, the Court had power to protect the party in whose favour the order for costs had been made by granting prior to the taxation of the costs an injunction restraining other party from disposing of his assets. In the circumstances the court would exercise the descretion to grant the injunction sought by the plaintiff). *Noyna Misser* v. *Rupikan*, 9 C., 609, 611 (1882). This provision is an application of the equitable maxim : "He who seeks Equity must do Equity:" "He who comes into Equity must come with clean hands." In *Subba Naidu* v. *Haji Badsha Suhib*, 26 M., 168 175 (1902), it was held trere was no such bar and the question of a defendant's refusal to accept an offer was considered.

77. Kerr, Inj., 20 and *see* Beach, Inj., §§14—16; Spelling, *op. cit*,. § 26.

78. Beach, Inj., § 14 ; Spelling, *op. cit.*, § 26 .

79. *See Perry* v. *Truefitt*, 6 Beav., 76 ; *Morgan* v. *McAdam*, 36 L. J., Ch., 228; Nelson, Specific Relief Act, 296.

80. So a plaintiff will not get relief if the covenant which he seeks to enforce is tainted with illegality: *Davies* v. *Makuna*, 29 Ch. D., 596 ; *Kalliandas* v. *Tulsidas*, 23 B., 786 (1899).

81. *See Littlewood* v. *Caldwell*, 11 Price, 97 ; Nelson, *op. cit.*, 296; *Kalliandas* v. *Tulsidas*, 23 B., 786 (1899).

82. Kerr, Inj., 20.

CENTRAL LIBRARY

is any lack of truth in the plaintiff's case.[83] An injunction will be withheld when apparently sought for the purpose of obtaining an undue advantage; when in the opinion of the Court it would be used for the purpose of creating mischief; or when it would give the complainant the means of coercing a compromise.[84] So, again, it is not sufficient in all cases for the plaintiff to say that he is ready and willing to pay whatever is due. He must first pay what is conceded to be due or what can be seen to be due on the face of the pleadings or affidavits.[85] Nor can a plaintiff have relief upon an agreement unless it appears that he has actually carried out, so far as in him lies, his own part thereof.[86]

In accordance, however, with the rule that a Court of Equity having acquired jurisdiction for one purpose will entertain it for all purposes, it may, where it has acquired jurisdiction of a whole tract of land, afford injunctive relief as to a part thereof, as to which, if it were alone, the relief might be refused by reason of the manner in which the plaintiff acquired it.[87]

(b) And in particular there must be no acquiescence.—An injunction cannot be granted to prevent a continuing breach in which the applicant has acquiesced,[88] nor where the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court. One way in which an applicant may so disentitle himself is if he has stood by for a considerable time and allowed the person against whom he applies to proceed with the action he has taken and lay out money and labour without objection and only applies to the Court after allowing all this to go on for some time.[89]

Parties who have acquiesced and by their conduct encouraged others to alter their condition cannot call upon the Court for its summary interference; and this principle applies with peculiar force when the property on which moneys have been expended is mineral property or the like, or if the act complained of is caused by a public company in the execution and construction of their works.[90] If a man

---

83. *Joseph* v. *Macowsky* (1892), 96 Cal., 518 (Amer.), cited in Beach, Inj., § 14 [in this case the plaintiff was denicd an injunction because he had represented the razors in question to be manufacturerd in Sheffield, when in fact he did not know where, nor by whom, they were manufactured].

84. *New Manufacturing Company* v. *Superior Drill Company* (1893), 56 Fed., 152 (Amer.), cited *ib.*, § 16.

85. *State Railroad Cases*, 92 U. S., 567, 616 (Amer.), cited *ib.* So, for example, it was held that a person seeking to prevent the enforcement of an usurious contract must show that he has paid or tendered the amount justly due, *ib.*

86. *De Mattos* v. *Gibson*, 4 D. & J., 276; *Peto* v. *Brighton, Uckfield and Tunbridge Railway Co.*, 1 H. & M., 468; *Fehter* v. *Montgomery*, 33 Beav., 22; *Telegraph Despatch, & Co*, v. *McLean*, 8 Ch., 658.

87. Beach, Inj., § 14.

88. Act 47 of 1963, s. 41 (g). See *Kashibai* v. *Vallabhai*, 24 Bom. L. R.,305 (1922).

89. *Noyna Misser* v. *Rupikun*, 9 C., 609, 611 (1882).

90. Kerr, Inj., 20, 21; Hilliard, Inj., § 34; Beach, Inj. § 42. See Halsbury's *Laws of England*, (4th ed.), Vol. 24, para 943.

CENTRAL LIBRARY

by words or by conduct has intimated that he consents to an act which has been done and that he will offer no opposition to it although it could not have been lawfully done without his consent, and he thereby induced others to do that from which they might otherwise have abstained, he cannot question the legality of the act he had so sanctioned to the prejudice of those who have so given credit to his words, or to the fair inference to be drawn from his conduct. If a party has an interest to prevent an act being done and acquiesces in it so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have, had it been done by his previous licence.[91]

Acquiescence or forbearance therefore may, in the absence of explanatory circumstances, be an impediment to the assertain of a right ;[92] as where the defendants can say that they had been induced to do anything by an idea of the plaintiff's assent caused by his own acts or omissions.[93] It is clear that there must be an injury to acquiesce in ;[94] and that there can be no acquiescence if the party against whom it is alleged was not aware that his rights had been violated ;[95] or permitted an act to take place in error and in ignorance of the consequences.[96] Acquiescence imports full knowledge.[97] Parties cannot be said to acquiesce in the claims of others unless they are fully cognisant of their right to dispute them.[98] Relief will not be denied to a person on the ground of acquiescence in what he was led to consider a mere temporary violation of his right ;[99] nor does the acquiescence in a state of things which produces little injury warrant the subsequent extension of them to an extent productive of serious damage.[1] The acquiescence may be of one of several co-plaintiffs ;[2] a corporation or company ;[3] or of an agent ;[4] and the conduct

---

91. *Uda Begam* v. *Imam-ud-din*, 1 A., 82, 85 (1875), citing *Cairncross* v. *Lorimer*, 3 Macq. H. L. Cas., 829.

92. *Jamnadas* v. *Atmaram* 2 B. at p. 137 (1877), where the circumstances which constitute delay and acquiescence are discussed [and see *Land Mortgage Bank* v. *Ahmedbhoy*, 8 B., at pp. 53, 84 (1883).] See, Halsbury's *Laws of England*, (4th ed.), Vol. 24, para 958.

93. *Ib.*

94. *Haines* v. *Taylor*, 2 Ph. 209.

95. *Weldon* v. *Dicks*, 10 Ch. D., 247.

96. *Bankart* v. *Houghton*, 27 Beav., 425, 431: *Johnson* v. *Wyatt*. 2 D. J, & S., 18 ; if both parties are equally ignorant the one is not to suffer more than the other: *Greenhalgh* v. *Manchester and Birmingham Railway*, 3 M. & C., 784, 791 ; *Bankart* v. *Houghton*, supra.

97. *Gopalnarain Mozoomdar* v. *Muddomutty Guptu*, 14 B. L. R. 35 (1874).

98. *Marker* v. *Marker*, 9 Ha., 16. ,

99. Kerr, Inj., 23 *et ibi casas.*

1. *Ib.*, *Bankart* v. *Houghton*, 27 Beav., 430.

2. *Marker* v. *Marker*, 9 Ha., 15.

3. *Laird* v. *Birkenhead Railway Co.*, John, 500 ; *Hill* v. *South Staffordshire Railway Co.*, 11 Jur. N.S. 192.

4. *Att.-Gen.* v. *Briggs*, 1 Jur N.S. 1084 ; *Miles* v. *Tobin*, 16 W,R, 465.

5. Kerr, Inj., 22 *et ibi casas.*

CENTRAL LIBRARY

and dealings of a man with others than the party with whom the contest exists may constitute a case of acquiescence.[5] It has been said that where the plaintiff has protested against his rights being interfered with there is no acquiescence.[6] But a mere protest is not in general sufficient to exclude the consequences of laches or acquiescence.[7] If a bare acquiescence is a valid defence, it must be an acquiescence while the act acquiesced in is in progress, and not after it has been completed. If a person having a right and seeing another person about to commit or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might have otherwise abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. Mere submission to an act when it is once completed, without any knowledge or assent upon the part of the person whose right is infringed upon, is only a submission to an injury, and it cannot take away the right infringed upon when such submission is for any time short of the period of limitation.[8] The acquiescence must be such as proves plaintiff's assent to the acts complained of and to the injuries which may reasonably be anticipated to flow from such acts.[9] In all cases in order to justify the application of the principle, it must clearly appear that the party against whom acquiescence is alleged should have full *knowledge* of his rights, and should by his conduct have *encouraged* the other party *to alter* his condition, and that the latter should have acted *upon the faith* of the encouragement so held out.[10]

If acquiescence be pleaded as a defence, an issue to that effect should be raised. For, if the point be taken, evidence may be given to disprove it. If a plaintiff is *prima facie* entitled to the rights claimed, it is for the defendant to raise the defence that the right has been lost by acquiescence; and if no such objection be taken in the Court of first instance, it will not be entertained by the Court of Appeal.[11] Further, the *onus* of proof on any questoin of acquiescence as either destroying or limiting the plaintiff's rights lies upon the defendant who must satisfy the Court that the plaintiff or his agent has delayed unreasonably to assert the right claimed or has expressly or tacitly assented to

---

6. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 137, (1877).

7. Kerr, Inj., 22 *et ibi casas* ; if money is expended after full and distinct notice of objection and of steps about to be taken the consequences of acquiescence are excluded.

(8) *Ib.*, *Kunhammad* v. *Narayanan Mussad*, 12 M., 322, 323 (1888), citing *De Bussche* v. *Alt*, L. R., 8 Ch. D., 286.

9. High, Inj., Inj., § 10.

10. Kerr, Inj., 21 citing *Ramsden* v. *Dyson*, 1 E. & I., App., 129 [followed in *Kunhammad* v. *Narayanan Mussad*, 12 M., 320, 322, 324 (1888); *Onkarapa* v. *Subaji Pandurang*, 15 B., 73 (1890) ; *Shaik Hussain* v. *Govardhandas Parmanandas*, 20 B., 6 (1895); *Bankart* v. *Tenant*, 10 Eq., 146 ; *Greenhalgh* v. *Manchester and Birmingham Railway Co.*, 3 M. & C., 791 ; *Marker* v. *Marker*, 9 Ha., 16 ; *Russell* v. *Watts*, 25 Ch. D., 576; *Proctor* v.*Bennis*, 36 Ch. D.. 740]

11. *Nandkishor* v. *Bhagubai*, 8 B., 95, 98 (1883).

CENTRAL LIBRARY

what has been done by the defendant.[12] And to make a case of acquiescence the evidence must be clear and unequivocal.[13] An amount of acquiescence less than that which would be a bar to all remedy may induce the Court to award damages only and not an injunction :[14] though a man may by his acquiescence preclude himself not only from coming to the Court for an injunction, but from obtaining damages.[15] Acquiescence may of course be saisfactorily accounted for and explained.[16]

Though the same principles apply to both temporary and perpetual injunctions, yet to justify the Court in refusing to give a perpetual injunction, there must be a stronger case of acquiescence than is sufficient to be a bar on the interlocutory application, for the dismissal of a suit upon the ground of acquiescence amounts to a decision that a right which has once existed is absolutely and for ever lost.[17] "A short acquiescence may properly induce the Court not to interfere *ex parte*. A longer acquiescence may, under the circumstances, throw serious doubt upon the right of the plaintiff, and induce the Court not to interfere by interlocutory order even when applied for on notice. But when acquiescence is used as an argument in support of a demurrer, there must to make it effective, be such an acquiescence as wholly to disentitle the plaintiff to any relief. It must be assumed that the plaintiff had originally a right, but that he has altogether deprived himself of it by acquiescence."[18]

(c) Or delay.—It is a general principle that parties seeking an injunction must come forward speedily.[19] "*Delay defeats Equities.*" But the only bar to the enforcement of a *purely legal* right is the lapse of the time required by the Statute of Limitations to bar the remedy.[20] Mere laches short of the period prescribed by the law of limitation is no bar to the enforcement of a right absolutely vested in the plaintiff at the period of suit ;[21] and the doctrines

---

12. *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., at p. 259 (1889).

13. *Wavell* v. *Watson*, W. N. (1866)., 344.

14. *Sayers* v. *Collyer*, 28 Ch. D., 103 ; *Ranchhod* v. *Lallu*, 10 Bom. H.C. 95. 97 (1873) ; and see *Nasarbhai Ahmedbhai* v. *Munshi Badrudin*, 16. B., 533, 535 (1891).

15. *Kelsey* v. *Dodd*, 52 L. J., Ch. 34 ; and see *Smith* v. *Smith*, L. R., ; 20 Eq., 503.

16. *Joyce's* Inj. 1264 ; 19, *et ibi casas* ; as for instance that it has taken place upon the faith of a representation that no grievance would result from or be produced by the act, *ib.* ; *Davies* v. *Marshall*, 10 C. B. N. S. 711.

17. Kerr, Inj., 24 ; *See* Act I of 1877, s. 56; cl. (*h*).

18. *Gordon* v. *Cheltenham Railway Co.* 5 Beav., 233, *per* Lord Langdale.

19. *Joyce's Doctrines* 35 ; *Isaacson* v. *Thompson*, 20 W. R. (Eng.) 197 ; 41 L. J., Ch., 101. See for instance *Tikamchand* v. *Santoke*, 24 C. W. N. 735 (1920).

20. *Venkopadhyaya* v. *Kavari Hengusu* 2 Mad. H. C. R., 36 (1864) ; *Seshamma* v. *Subbarayadu*. 18 M., 403 (1895). So conversely where the positive law assigns certain consequences to a particular possession or enjoyment for a specified term that result is not defeated by any mere assertion of a claim without the alleged right being reduced to *res litigiosa* by proceedings in Court. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 84, 85 (1888).

21. *Peddamathulaty v. Timma Reddy*, 2 Mad. H. C. R., 270, 273. See

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

of laches and indirect acquiescence apply only to cases in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different from that determined by the Legislature.[22] The equitable doctrine of laches applies to executory interests, but in the case of interests which are executed mere laches will not of itself disentitle the party to relief unless such party by standing by waive or abandon any right which he may possess, and which therefore under the circumstances he is not entitled to enforce.[23]

It has been held by the Madras High Court (though the point was *obiter dictum*), that the equitable doctrine of laches and acquiescence is not applicable to suits for which a period of limitation is provided by the Limitation Act, and that lapse of time as a defence to such suits can only be relied upon when under the Act it has become a bar.[24] Unlike acquiescence, delay is not particularly mentioned in the Specific Relief Act, though it might possibly be held to be included within the terms of section 56(j) [now represented by section 41 (*i*)].

Sir James Fitzjames Stephen in his speech upon the Bill which became the (old) Specific Relief Act observed that the Indian Legislature did not intend to deal with the question of delay in seeking specific relief, for the Statute of Limitations had, unlike the English law, provided specific periods of limitation for these reliefs. But the Courts have not felt themselves bound by these observations. The Act gives the Court a discretion to grant or withhold specific relief, even when circumstances justifying the awarding of such relief exist. Where therefore relief is discretionary, the Court would be justified in refusing relief on the ground of laches, even though the plaintiff's suit may have been instituted within the period allowed by the law of limitation.[25] The right

---

Halsbury's *Laws of England*, (4th ed), vol. 24, para 944; *Satyanarayana* v. *Yelloji Rao*, A.I.R. 1965 S.C. 1405 (Some delay should not induce a court to refuse its discretionary relief).

22. *Peddamathulaty* v. *Timma Reddy*, 2 Mad. H. C. R., at p. 275. See *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B., at p. 138 (1877); *Tarruck Chunder* v. *Harri Shunker*, 22. W. R, 267 (1874); *Shaikh Ally Hossein* v. *Sheikh Muzhur Hossein*, 4 C. L. R. 577 (1879); *Ramphal Shahoo* v. *Misree Lal*, 24 W. R. 97 (1875). The laws relating to laches and limitation are of course distinguishable. Under the latter law laches even for the whole of the prescribed period, less only a day, cannot deprive the plaintiff of his right of action, for he may institute his action on that day. *See* Mad. L. J., Vol V Pt., X.. p, 376,

23. *Clarke* v. *Hart*, 6 H. L. Cas., 633 ; 6 D. G. M. & G,, 332 ; 19 Beav, 349,

24. *Ram Rau* v. *Raja Rau*, 2 Mad. H. C. R., 114 (1864); this is no doubt so with regard to delay where the relief is not discretionary. See *Uda Begam* v. *Imam-ud-din*, 1 A., 86 (1875). So delay by the owner in bringing a suit for the recovery of land is not *in itself* sufficient to create an Esuity in favour of the person spending money on the land so as to deprive the owner of his strict rights ; *Premji Iivan Bhate* v. *Haji Cassum Juma Ahmed*, 20 B, 298 (1895).

25. See Madras L. J. Vol. V. Pt. VII, pp. 217 218.

CENTRAL LIBRARY

rule in these matters is submitted to be as follows :—There must ordinarily be something more than a mere delay in instituting proceedings to deprive a man of his legal remedies. But a distinction is to be drawn between those cases in which a suitor seeks some relief which, if he proves his case, the Court is *bound* to grant him, and the cases in which the Court has a *discretion* to grant or refuse such relief. In the first class of cases *mere delay* short of the period of limitation is not sufficient to deprive the suitor of his right of action. But where there is more than mere delay, where there is conduct or language inducing a reasonable belief that a right is foregone, the party who acts upon the belief so induced, and whose position is altered by this belief, is entitled in this country, as in other countries, to plead *acquiescence*, and the plea, if sufficiently proved, ought to be held a good answer to an action, although the plaintiff may have brought suit within the period prescribed by the law of limitation. When a suitor has a right to demand relief a stronger case must be made out against him than when the Court has a discretion to grant or refuse it. When it has such a discretion, either *delay* or *acquiescence*, under the particular circumstances of the case, *may* be a bar to the grant of relief.[26]

Mere delay must be distinguished both from acquiescence and release or abandonment of right. Quiescence is not acquiescence. There must be something more than cessation of action to constitute acquiescence. But inaction may imply and be evidence of acquiescence.[27] It is not easy to gauge the precise effect of the decisions dealing with delay, for in nearly every instance where delay becomes material, it is evidence of acquiescence or is coupled with other conduct which is held to disentitle the applicant to relief. So far as delay is evidence of acquiescence, it will be dealt with under the preceding rules relating to acquiescence. The question in so far as it relates to *mere* delay is one of greater difficulty.

The Court has a wide discretion, and it seems that delay though it may not amount to proof of acquiescence may be sufficient under the particular circumstances of the case to disentitle a suitor to the summary interference of the Court by a temporary injunction.[28] The Court cannot avoid being influenced by the fact of delay ; for amongst other things, it may be calculated to throw considerable doubt upon the reality of the alleged injury and will compel the Court to weigh carefully the inconvenience which may be sustained by reason of the issue of the injunction.[29] The principles with respect to delay equally

---

26. See *Uda Begam* v. *Imam-ud-din*, 1 A., 82, 86, 87 (1875) ; *Krishna Chandra* v. *Hem Chandra*, 21 C. L. J., 469 (1915) where it was held that the plaintiff who delayed was not to be assisted at the expense of the defendant. *See* Beach, Inj., §43.

27. *Benode Coomari Dossee* v. *Soudaminey Dossee*, 16 C., 261 (1889); *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B., 137 (1877) ; as to mere quiescence, see *Baswantapa Shidapa* v. *Ranu*, 9 B., 86 (1884).

28. Kerr, Inj., Joyce's Doctrines, 34—36 ; Hilliard, Inj., § 34. Spelling, *op cit.*, § 26. See *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5, 7 (1881); *Amolak Ram* v. *Saheb Singh*, 7 A., 550, 552 (1885); *Nanabhai Ganpatrav Dhairyavan* v. *Janardhan Vasudev*, 12 B., 110, 121 (1886).

29. *Ware* v. *Regent's Canal Co.*, 3 DeG. & J., 230.

CENTRAL LIBRARY

apply to perpetual injunctions, but to justify the refusal of the Court to interfere on this ground, a stronger case is required to be made out than is necessary upon an interlocutory application.[30] It has been subsequently held[31] that, even according to the English decisions, mere delay is not a sufficient cause, and that inasmuch as in this country a period of limitation is prescribed even for suits where the grant of relief is within the discretion of the Court, mere lapse of time short of the period of limitation should ordinarily be held not to be a good ground for refusing relief.[32] To operate as a bar to relief, the delay should be such as to amount to waiver of the plaintiff's right by acquiescence, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted. When such is not the case any lapse of time should not disentitle a claimant to relief to which he has otherwise shown his title.[33]

Delay is not material so long as matters remain *in status quo*[34] and it does not mislead[35] the defendant or amount to quiescence.[36] It must be shown that the delay has prejudiced the defendant.[37] The supreme, importance of this consideration is insisted upon by the Privy Council in the judgment in the *Lindsay Petroleum Company* v. *Hurd*[38]:—"Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct or neglect he has. though perhaps not waiving that remedy yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted: in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any Statute of Limitations, the validity of that defence must be tried upon principles substantially equitable."

On the whole, the tendency of the Courts is to discourage the plea of laches, unless somebody has been damnified by it, and as in this country the

---

30. Kerr, Inj., 36. See *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B., 137, 138 (1877) ; *Land Mortgage Bank of India* v. *Ahmedbhoy, Habibbhoy*, 8 B., 35, 52, 84 (1883).

31. *Athikaratu Nanu Menon* v. *Erathanīkat Komu Nayar*, 21 M., 42 (1897).

32. As to the immateriality of acquiescence when understood as only abstention from legal proceedings, see *Rochdale Canal Co.* v. *King*, 2 Sim. N. S., 89.

33. *Athikaratu Nanu Menon v. Erathanikat Komu Nayar*, 21 M., 42 (1897) ; citing *Erlanger* v. *New Sombrero Phosphate Company*, L. R., 3 App. Cas., 1218 ; *Rochefoucauld* v. *Boustead*, L. R. 1897. 1 Ch. D., 196 ; *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B., 133 (1877).

34. *Gale* v. *Abbott*, 8 Jur. N. S., 987 ; *Archbold* v. *Scully*, 9 H. L., 388.

35. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 84. 85 (1883).

36. *Ib.*

37. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B., 138 (1877) ; *Nanabhai Ganpatrav Dhairyavan* v. *Janardan Vasudev*, 12 B., 110, 121 (1886).

38. L. R., 5 P. C., 239, cited in *Jamnadas Shankarlal* v. *Atmaram Harjivan* supra.

CENTRAL LIBRARY

period of limitation enacted by the Statute is generally very short, there is the less need for the application of the equitable doctrines relating to delay.[39] Delay may, of course, be satisfactorily explained;[40] as was done in the first of the cases last cited where there had been a delay of nearly five years. And in the second of those cases it was added that no instance had been adduced in which, after full notice that the plaintiff would take legal proceedings in the event of an injury to his property, he has been deprived of any portion of his remedy against a defendant through a mere delay in bringing his suit, not being such as to induce a reasonable supposition of final acquiescence.[41] Where there has been delay the cause for it should appear upon the affidavits.[42] With regard to delay as affecting the issue of mandatory injunctions, v. *post*.

(v) **There must be a greater convenience in granting than in refusing the Injunction.**—The Court in granting an *interim* injunction will be guided by the question of convenience or inconvenience and will look at two things. It will first see whether there is a *bona fide* contention between the parties, and then on which side, in the event of obtaining a successful result to the suit, will be the balance of inconvenience, if the injunction do not issue, bearing in mind the important principle of retaining immovable property *in status quo*.[43] The burden lies upon the plaintiff, as the person applying for the Injunction, of showing that his inconvenience exceeds that of the defendant. He must make out a case of a comparative inconvenience entitling him to the interference of the Court.[44] So also in the case of perpetual injunction the consideration of the balance of convenience and inconvenience is not neglected by the Court. The principle is well settled that in granting or withholding an Injunction, the Courts exercise a judicial discretion and weigh the amount of substantial mischief done or threatened to the plaintiff and compare it with that

---

39. *See Madras* L. J., Vol. V, Pt. VII, p. 218.

40. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B.I 52, 53 (1883) ; *Jamnads Shankarlal* v. *Atmaram Harjivan*, 2 B., 138 (1877) ; Joyce's Inj., 1264. Thus the party against whom acquiescence is alleged may have been justified in assuming that his rights would not be affected. Kerr, 6th Ed., 25 and see *Piggott* v. *Middlesex County Council* (1909), 1 Ch., 148.

41. This was a case of mandatory Injunction, and the rule in so far as it relates to such Injunction appears to have been too broadly stated. See *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., 252, 264—266 (1889), *post*.

42. *Assur Purshotam* v. *Ratanbai*, 13 B., 56, 57 (1888).

43. *State of Karnataka* v. *Venkataraj* A.I.R, 1975 Karn. 119 ; *Parveen Chander* v. *Raj Kumar*, A.I.R. 1980 Punj. 217; *Gomes* v. *Carter*, 1 Ind. Jur. N. S., 411, 412 (1856), *per* Phear, J. ; *Anantnath Dey* v. *Mackintosh*, 6 B. L. R., 571, 573 (1871); *Ruplal Khettry* v. *Mahima Chandra Roy*, 5 B. L. R., 254, 257 (1870), *per* Norman, J., following *Bacon* v. *Jones*, M & Cr., 433. See Kerr, Inj., 25; 26. *Begg Dunlop* v. *Satis Chandra*, 46 C., 1001 (1919) ; 29 C.L.J. 584.

44. See *Associated Cement Co. Ltd.* v. *State of Rajasthan*, A.I.R. 1981 Raj. 133 ; *Haribandhu Das* v. *Ashoka Industries (P.) Ltd.*, A.I.R. 1984 Ori 104 ; *Dilkush Desai* v. *Don Bros. Co.*, A.I.R. 1981 Goa 34. *Child* v. *Douglas*, 5 D, M, & G., 741. In *Subba Naidu* v. *Haji Badsha Saheb*, 26 M., 168, 175 (1902), the balance of convenience was held to be in favour of the issue of an Injunction.

CENTRAL LIBRARY

which the injunction, if granted. would inflict upon the defendant.[45] Where there is a right it cannot be limited by the religious prejudices of neighbours.[46]

Where the grant or refusal of an interlocutory injunction will have the practical effect of putting an end to the action, the court should approach the case on the broad principle of what it can do in its best endeavour to avoid injustice, and to balance the risk of doing an injustice to either party. The court should bear in mind that to grant the injunction sought by the plaintiff would mean giving him judgment in the case against the defendant without permitting the defendant the right of trial. Accordingly, the established guidelines requiring the court to look at the balance of convenience when deciding whether to grant or refuse an interlocutory injunction do not apply in such a case, since, whatever the strengths of either side, the defendant should not be precluded by the grant of an interlocutory injunction from disputing the plaintiff's claim at a trial (*Cayne* v. *Global Natural Resources*, (1984)1 All E.R. 225).

(vi) And equally efficacious relief must not be obtainable by any other usual remedy except in case of breach of trust.—The original jurisdiction to decree Injunctions was based on the fact that Courts of Common Law could afford no remedy at all or at any rate a remedy that was imperfect or inadequate to the circumstances of the case.[47] It was a valid objection in all cases of applications for relief by injunction that the party aggrieved had a full and adequate remedy at law. Where it did not appear that the remedy at law was inadequate, or that the party aggrieved was entitled to more speedy relief than that which could be obtained by the ordinary process of a Court of Common Law an injunction was refused. But the remedy at law must have reached the necessities of the case. Unless such a legal remedy was shown, a Court of Equity might have lent its aid by Injunction notwithstanding the existence of a nominal remedy at law.[48]

Thus for example an Injunction would not be granted where damages were an adequate remedy; where the applicant had such a remedy by motion to quash, or set aside, the writ or order complained of, or by application to revoke a void order; or where an action at law was fully adequate and available; or where the party had his remedy by attachment, *certiorari*, appeal, *mandamus* or the like.[49] In the same manner the Specific Relief Act provides that except in cases of breach of trust an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding.[50]

This provision is an enactment of the general principle that an injunc-

---

45. *The Shamnagger Jute Factory Co.*, v. *Ram Narain Chatterjee*, 14 C., 189, 200 (1886), *per* Wilson and Porter, JJ. *Krishna Chandra* v. *Hem Chandra*, 21 C. L. J., 469 (1915).

46. *Behari Lal* v. *Ghasa Lal*, 24 A., 499 (1902).

47. v. *ante*, p. 26 ; Spelling, *op. cit.*, § 4.

48. Spelling, *loc. cit.*, §§ 13, 16, High, Inj., § 30.

49. Beach, Inj., §§ 26—30.

50. Act 47 of 1963, s. 41 (h), *Noyna Misser* v. *Rupikun*, 9 *C.*, 609, 611 (1882). *Ram Kisen* v. *Poorman*, 31 C. L. J., 259 (1920). See *Delhi Municipality* v. *Suresh Chandra*, A.I.R. 1976 S.C. 2621.

CENTRAL LIBRARY

tion, like specific performance, is an exceptional form of relief intended to supplement the defects of the usual mode of proceeding, and therefore applicable only where the ordinary remedy is either inadequate or not available. The exception relative to cases of breach of trust is grounded upon the fact that the beneficiary, being. to the limit of his interest, the true owner of the property, has a right to restrain the trustee from dealing with it on his behalf, otherwise than as a prudent owner would deal with it.[51]

Repeated violations, however, of an established legal right cannot in ordinary case be adequately met by damages, nor can these damages be satisfactorily ascertained.[52]

Where a suit[53] was brought to obtain an injunction restraining the defendants from building an indigo factory on the land leased to him, it was argued that if the erection of an indigo factory renders the land unfit for the purposes of the tenancy, the plaintiff is, under section 25, clause (a) of the Bengal Tenancy Act, entitled to eject the tenant and that is a more complete remedy than a remedy by way of injunction. And if that is so, the Court should not entertain a suit for the less complete remedy.

The Court should not by refusing an injunction and allowing compensation let a trespasser put a value or money's worth on another man's property and deprive him of it against his will.[54] The principle upon which such cases are to be decided was enunciated by Lord Selborne, L.C., in *Goodson v. Richardson*[55] where he said : 'I cannot look upon this case otherwise than as a deliberate and unlawful invasion by one man of another man's land for the purpose of a continuing trespass, which is in law. a series of trespasses from time to time to the gain and profit of the trespasser, without the consent of the owner of the land, and it appears to me as such to be a proper subject for an injunction.' And there he distinguished between such cases and cases of ancient lights and covenants. In the former one man appropriates to himself and uses another man's property; in the latter one man does something upon his own property which exposes him to an action by another man. The Courts lean towards compensation in the latter class of cases because the wrong is done by the wrong-doer upon his own property. It would not have been a wrong but for the fact that his right of free user as owner happens to be subject to the right acquired by another man for the enjoyment of his property and restricting the absolute right of property of the former. In such a case when anything is done in violation of right limiting another man's right of ownership, the Court naturally has to consider whether the violation can be compensated by damages. But it is a different thing when a man illegally builds upon another man's land, or builds in such a way as, to overhang a portion of it. There. to use the words of James L.J., in *Goodson v. Richardson,* he is taking that which was not his for the purpose of a profit to himself against the

---

51. Collett's Specific Relief Act. 354.
52. *Apaji Palit* v. Apa. 26 B., 735 (1902).
53. *Surendra Narain Singh* v. *Hari Mohan Misser*, 31 C., 174 (1903).
54. *Jethalal Hirachand* v. *Lalbhai Dalpatbhai*. 28 B., 298, 303, 304 (1904).
55. L. R., 9 Ch., 221, 224.

CENTRAL LIBRARY

will of the real owner. That is taking another man's property improperly both morally as well as legally. Relief by way of compensation in such a case is tantamount to allowing a trespasser to purchase another man's property against that man's will, on no principle of law of equity is that allowable; and the current of decisions whether here or in England is opposed to it.

American Cyanamid case. An American Compnay introduced an absorbable surgical sutures in U.K. which was patented by them. Subsequently, an U.K. Company whose catgut sutures were in extensive use also introduced sutures with similar chemical substance as that of the American Company. A *quia timet* action was brought by the American Company against the English Company and claimed injunction to restrain a threatened infringement on their patent. It was held that the use of expressions as "a probabitity", "a prima facie case" or "a strong prima facie case" in the context of the exercise of the discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court must no doubt be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried [*American Cyanamid Co.* v. *Ethicon Ltd.* (1975)1 All E.R. 504 (H.L.)]

In another case a clerk in a Solicitor's firm entered into an agreement of employment which contained a restrictive clause whereby for a period of 5 years after determination of the employment, however it was determined, the defendant covenanted that he would not be employed, interested or concerned in the Legal Profession within the postal district of his employer. The plaintiff commenced proceedings against the defendant alleging that his employment with another firm was in breach of the restrictitive clause in the agreement and claimed injunction in terms of that clause to restrain the defendant from being employed, interested or concerned in the legal profession within the specified area. In that case it was held that interlocutory injunction should not be granted as the plaintiff claiming an interlocutory injunction did not establish that he had a prima facie case but merely that there was a serious question to be tried provided that the court was satisfied that there was a serious question to be tried. But it had to go on to consider whether the balance of convenience lay. The relative strength of each party's case was only the last factor to be taken into action in considering balance of convenience where it was otherwise even after the court had taken in account the compensatability by damages of either party and the preservation of the status quo. The plaintiff and satisfied the first requirement that there was a serious question to be tried. In the absence of evidence whether or not damages should be an adequate remedy for either party, the court had to go on to consider the balance of convenience generally [*Fellows* v. *Fisher*, (1975)2 All E.R. 829 (C.A.)].

The view expressed in the *Cyanamid* case has also been similar to the view adopted by the House of Lords in *Dimbleby & Sons Ltd.* v. *National Union of Journalists* [1984] 1 All. E.R. 751.

31. Perpetual Injunction.—After the establishment of the legal right and of its violation, the plaintiff may claim a perpetual injunction to prevent the recurrence of the wrong. An interlocutory injunction is not decisive upon

CENTRAL LIBRARY

the merits of the case, but a perpetual injunction, being in effect a decree, is conculsive upon all parties in interest. The jurisdiction is founded on the Equity of relieving a man from the necessity of bringing action after action for every violation of his right and of finally quieting the right, after a case has received such full decision as entitles the plaintiff to be protected against further trials of that right [56]

The aforementioned principles apply equally to perpetual as well as to temporary injunctions with the exceptions hereinafter stated. Whereas upon an application for a temporary injunction, the plaintiff is required merely to show a clear p*rima facie* case: in order to obtain a grant of a perpetual injunction, the legal right must have been *established.* as well as the facts of its actual or threatened violation productive of serious damage. A permanent injunction is only granted when (a) some established right has been invaded and (*b*) when damage has accrued or must necessarily accrue from the act or omission complained of.[57] There must have been (*a*) a material injury to a clear legal right ; and (*b*) damages must not be a sufficient compensation.[58] The conduct of the applicant and his agents must not have been such as to disentitle the applicant to relief,[59] and the principles relating to delay and acquiescence[60] are equally applicable to the case of perpetual as to that of temporary injunctions.

However, to justify the Court in refusing to interfere there must be a stronger case of acquiescence than is sufficient to be a bar upon the interlocutory application. The Court will not act upon light grounds against the legal rights of the parties. There must be fraud or such acquiescence as, in the view of the Court, would make it a fraud in the applicant to insist upon his legal rights.[61] The Court will consider the balance of convenience or inconvenience, and will not grant a perpetual Injunction when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust[62] and will lastly, in general, before exercising its juris-

---

56. *See* Kerr, Inj., 32—42 ; *Imperial Gas Company* v. *Broadbent*, 7 H. L,. 612 ; *Lowndes* v. *Bettle*, 33 L. J., Ch., 451.

57. *Ramon Hosiery Factory, Delhi* v. *J. K. Synthetics Ltd.,* A.I.R. 1974 Del. 207 ; *Dhanpat Singh* v. *Union of India*, 80 C.W.N. 805 ; *Kristna Ayyan* v. *Venkatachelli Mudali*, 7, Mad. H. C. R. 60, 71 (1872).

58. *Akilandammal* v. S. *Venkatachelli Mudali*, 6 Mad. H. C. R. 112, 116 (1871), following *Straight* v. *Burn*, L. R., 5 Ch. App., 163 ; *See* Act 47 of 1963. s. 38. See *Kashmir Kaur* v. *Manohar Singh*, 68 Punj. L.R. 194 (Perpetual injunction restraining the defendant from proclaintning herself as the wife of the Plaintiff) ; *Dhir Singh* v. *Kailashi*, 1965 A.W.R. (H.C.) 410 (Perpetual injunction by wife to restrain husband from entering into second marriage) ; see for contrary view *Parvati Devi* v. *Harbindra Singh*. A.I.R. 1980 Raj 249. *Gani Pala* v. *Kati*, A.I.R, 1980 J. & K. 35.

59. Act 47 of 1963,. s. 41 (i).

60. *Ib.*, s. 41(g) See, *R. S. Muthuswami Gounder* v. *A. Annamalai* A.I.R. 1981 Mad. 220.

61. Kerr, Inj., 32.

62. Act 47 of 1963, s. 41 (h). See, *Raja Bahadur K. N. Singh* v. *Union of India*, A.I.R. 1966 Pat. 305.

CENTRAL LIBRARY

diction, have regard not only to the dry strict rights of the plaintiff. but also to all the surrounding circumstances of the case.[63] There is no limitation for enforcement or execution of a decree for perpetual injunction (*Bashir* v. *Menholi*, A.I.R. 1982 All. 321).

32. Mandatory Injunctions. In addition to the preventive jurisdiction there is super-added the power of the Court to grant a mandatory Injunction. that is, an order compelling a defendant to restore things to the condition in which they were at the time when the plaintiff's complaint was made. A mandatory Injunction may be either temporary or perpetual.[64] On an interlocutory application the Court has power to pass a mandatory Injunction before the suit is heard.[65] The principles regulating its grant are those which are applicable to preventive injunctions, temporary or perpetual as the case may be. A doubt has, however, been expressed[66] whether a mandatory injunction can be considered a "temporary" injunction under O. XXXIX, r. 2 of the Code of Civil Procedure as amended by Act. 104 of 1976 and whether the Courts in India have any right to assume that in this respect they are on the same footing as the Courts in England and have the power and a discretion to issue mandatory injunctions upon interlocutory applications. It was, however, not necessary in this case to decide the point and the other learned Judge [67] who heard the suit expressed himself as being rather in favour of the jurisdiction saying "I am not sure that the Indian Courts have not similar powers." It has, moreover, been expressly held that the Indian Courts have power to issue temporary injunctions in a mandatory form.[68] A mandatory injunction is granted generally on the same principles and subject to the same conditions as a perpetual injunction. When a mandatory injunction is granted under section 39 of the Specific Relief Act, two elements have to be taken into consideration; in the first place, the Court has to determine what acts are necessary in order to prevent a breach of the obligation; in the stcond place, the requisite acts must be such as the Court is capable of enforcing.[69] As already observed, caution is required in the grant of all preventive relief. It has, however, been said that the exercise of the power to grant mandatory injunctions must be attended with the

---

63. *Wood* v. *Sutcliffe*, 2 Sim. N. S., 166. See as to the general principles governing the grant of perpetual Injunctions, Act 47 of 1963, ss. 38,41.

64. Act 47 of 1963, s. 39, the Court may order that the operation of the injunction shall be suspended until after a certain period ; *Smith* v. *Smith*, 20 Eq., 505: 1 Set., 199.

65. *Chaussey* v. *Jamna Flour Mills*, 16 Bom. L. R. 566 (1914).

66. *Rasul Karim* v. *Pirubhai Amirbbai*, 38 B., 381 (1914) *Per* Beaman, J.

67. Shah, J.

68. *Kandasvami* v. *Subramania*, 41 M., 208 (1817) ; foll. 41 C., 436 *Chaussey* v. *Jamma Flour Mills*, 16 Bom., I. R., 566 (1914): the Indian Courts having regard to principles laid down by the English Courts. See *Malla Suranna* v. *Kalla Suranna* A.I.R. 1969 A.P. 368 (Or. 39, r, 1, C.P.C. admits of mandattory injunction), *Chaturbhuj* v. *Mansukram*, 27 Bom. L. R. 73 (1924).

69. *Lakshmi Narain Bannerjee* v. *Tara Prosanna Bannerjee*, 31 C., 944, 949 (1904). See *K.M. Vishwanatha Pillai* v. *K. M. Shanmugam Pillai*, A.I.R. 1969 S.C. 493 (Mandatory injunction to direct defendant to execute a document to give effect to a transfer of permit under the Motor Vehicles Act).

CENTRAL LIBRARY

greatest possible caution. and that, although every case must depend upon its own circumstances, the Court will not interfere except in cases in which extreme, or at all events very serious, damage will ensue from its interference being withheld. The tendency, however, of modern decisions is towards a less sparing exercise of the jurisdiction than prevailed formerly.[70]

A mandatory injunction may be issued in respect either of a breach of contract,[71] or of an obligation arising in tort. So if a person by new buildings obstruct ancient lights, an injunction may be obtained against him, not only restraining him from going on with the buildings, but also ordering him to pull down so much of them as obstructs these lights.[72] A mandatory injunction may be granted to restrain the publication of a libel, even though it may be shown not to be injurious to the complainant's property.[73] It has been held in England that in exercising the jurisdiction by way of mandatory injunction against acts in violation of contract, covenant or agreement, the Court looks to the express stipulation of the agreement, and is not, as in cases of trespass or nuisance, influenced by considerations as to the nature or extent of the damage, or the comparative convenience or inconvenience of granting or witholding the injunction; for a man who enters into an agreement is bound in equity to a true and literal performance of it, and cannot be suffered to depart from it at his pleasure, leaving the other party to his remedy by damages at law.[74] It seems, however, in this country that, subject to the provisions of section 42 of the Specific Relief Act, the principles governing the grant of Injunctions are the same, whether the acts sought to be restrained

---

70. *Ratanji Hormasji Bottlewalla* v. *Edaji Hormasji Bottlewalla*, 8 Bom. H. C. R., 181, 188 (1871). per Sargent, J., citing *Isemberg* v. *East India House Estate Company*, 3 D. J. & S., 263 ; *Durell* v. *Pritchard*, Ch. App., 244 *Rasul Karim* v. *Pirubhai Amirbhai*, 38 B., 381 (1914).

71. Kerr, Inj., 495 *Ranchhod Jamnadas* v. *Lallu Haribhai*, 10 Bom. H. C. R., 95 (1873). As to mandatory Injunctions to carry out considerable public works, see *Municipal Commissioners of Madras* v. *Branson*, 3 M., 201, 210. (1881).

72. Act 47 of 1963, s. 39 ; and see *Ratanji Hormasji Bottlewalla* v. *Edaji Hormasji Bottlewalla*, 8 Bom. H. C. R. 181 (1871) ; *Ranchhod Jamnadas* v. *Lallu Haridas*, 10 Bom. H. C. R., 95 (1873) ; *Jamnadas Shankarlal* v. *Atmaram Harjivan*. 2 B., 133 (1877) : *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B., 95 (1883); *Kadarbhai* v. *Rahimbhai*, 13 B. 674 (1889) ; *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., 474 (1894) ; *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 G., 252 (1889) ; *Balu* v. *Maharu*, 20 B. 788 (1895) ; *Yaro* v. *Sonaullah*, 10 A., 259 (1897) ; *Muthu Krishna* v. *Somaliga*, 36 M., 11 (1911).

Other torts. As to right of way, see *G. I. P. Railway Company* v. *Nowroji Pestonji*, 10 B., 390 (1885) ; trespass, *Jawatri* v. *H. A. Emile*, 13 A., 98 (1890) ; Act I of 1877, s. 55. Illustration (*b*) ; ouster by co-sharer : *Shadi* v. *Anup Singh*, 12 A, 436 (1889); landlord and tenant; *Ramanadhan* v. *Zamindar of Ramnad*, 16 M, 407 (1893). Breach of confidential communication, Act I of 1877, s. 55, Illustrations (*e*), (*f*), (*g*); infringements of rights in letters, *ib.*, Illustration (*d*), copyright, trade-mark, *ib.*, Illustration (*g*), and so forth.

73. Act 47 of 1963, s. 39, *Shepherd* v. *Trustees of the Port of Bombay*, 1 B., 132, 477 (1876).

74. Kerr, Inj., 495. See Halsbury's *Laws of England* (4th ed) vol. 24, para 947 (circumstances in which mandatory injunction will be granted).

CENTRAL LIBRARY

are a breach of contract or a tort.[75] In both cases there must be no acquiescence and damages must not be a sufficient remedy,[76] and the restoration of things to their former condition must be the only relief which will meet the requirements of the case. Where there is one definite thing to be done about which there can be no doubt the Court will grant a mandatory injunction.[77] There is no real distinction as to the conditions under which mandatory and other injunctions are granted.[78]

Prompt action is essential if a mandatory injunction is the desired remedy.[79] Where a plaintiff has not brought his suit or applied for an injunction at the earliest opportunity, but has waited till the act complained of by him has been completed, and then asks for a mandatory injunction, such an injunction will not in general be granted.[80] The Court will seldom interfere to pull down a building which has been erected without complaint.[81] and unless very serious damage would otherwise result will not order a building already finished to be pulled down:[82] though the Court will have regard to the character of the building sought to be removed;[83] and there is no rule which prevents the Court from giving relief where the injury sought to be restrained has been completed before the commencement of the action.[84] But in a more recent Madras case it was held that a landlord should not have a mandatory injunction for demolition of a building unless he has not only objected to such building but has also taken legal steps to pervent it.[85] Where the defendants thought fit to carry up a wall since the decree of the lower Court, notwithstanding an appeal to the High Court, a mandatory injunction was issued directing them to remove it.[86]

Where a temporary injunction had been granted against building it was held on appeal that it must be maintained on the principle that in such

---

75. See Act 47 of 1963, ss. 10, 38.

76. *Ranchod Jamnadas* v. *Lallu Haridas*, 10 Bom. H.C.R., 95 (1873); Kerr, Inj., 49. *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B., 95 (1883).

77. *Puddephatt* v. *Leith* (1916), 1 Ch., 200.

78. *Smith* v. *Smith*, 44 L. J. Ch., 630.

79. *Jai Narain* v. *Municipal Committee*, A.I.R. 1953 Lah. 157; *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., 492 (1894); Kerr, Inj., 46 *See* also, *Phillip* v. *Subba Iyer*, A.I.R. 1956 Trav-Co. 57.

80. *Sadasiva* v. *Subramaniam*, (1977)1 M.L.J. 67 (Plaintiff acquiesced in the construction of a structure for a quarter of century and as such no mandatory injunction was granted). *Narain Das* v. *Attma Ram*, A.I.R. 1974 Raj. 144; *Benode Coomarce Dossee* v. *Soudamaney Dossee*, 16 C., 252 (1889). *Ulagappan Ambalam* v. *Chidambaram Chetti*, 29 M., 497 (1906). See *Haji Syed Mahomed* v. *Gulab Rai*, 20 A., 345 (1898).

81. *Benode Coomaree Dossee* v. *Soudamaney Dossee*. 16 C., 252 (1889).

82. *Gort* v. *Clark*, 16 W. R. (Eng.), 569. See *Sparling* v. *Clarson*, 17 W. R. (Eng.), 518.

83. *Baxter* v. Bower, 44 L. J. Ch., 625.

84. Kerr, Inj., 44. See Halsbury's *Laws of England*, (4th ed) vol 24, Para 950.

85. *Ulagappan Ambalam* v. *Chidambaram Chetty*, 29 M., 497, following *Sankaralingam Chettiar* v. *Stephen-Ralli*, S. A. No. 959 of 1901.

86. *Kadarbhai* v. *Rahimbhai*, 13 B., 674 (1889); see as to completion of construction pending suit, *Gajadhar* v. *Keshav Lall*, 13 A. L. J. 385 (1915).

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

a case matters should be allowed to remain as far as possible *in status quo*, and that the defendant must not be placed in a position to say afterwards upon the basis of his own act that on Equitable considerations demolition should not be insisted upon.[87]

Mere notice not to continue to obstruct plaintiff's rights, is not, when not followed by legal proceedings, a sufficiently special circumstance for granting a mandatory injunction.[88] The fact that the plaintiff has given notice of objection to what is threatened before it has been carried out, does not make the injunction a thing of course.[89] On the other hand, if the act complained of is continued or carried on after notice that it is objected to and the injury is of a serious nature, the jurisdiction will be exercised more freely than in cases where complaint is not made until after it is completed.[90]

In the undermentioned case[91] plaintiff sued to restrain the defendants from erecting a certain door. The plaint also contained a prayer for "such other relief as the Court might think fit." After filing the plaint the plaintiff applied for an *interim* injunction pending the hearing of the suit, which, however, was refused. The defendants thereupon erected the door, and at the hearing contended that inasmuch as the plaint prayed only to prevent the erection of the door and not for its removal when erected, the plaintiff could not obtain the latter relief in this suit but must file a fresh suit. The lower Court dismissed the suit, holding that on the erection of the door a new and different cause of action had arisen for which a fresh suit must be filed on appeal. *Held* (reversing the decree and remanding the case), that on the suit as framed the Court could grant a mandatory injunction for the removal of the door. The suit was rightly framed in the light of the circumstances which existed when it was brought. It was the defendant's subsequent conduct which rendered it necessary that the plaintiff should be given as prayed for in his plaint, such other relief as the Court might think fit. The Court will take into consideration the comparative convenience and inconvenience which the granting or withholding the injunction would cause to the parties.[92] But if the plaintiff has sustained an injury which can be effectually remedied in only one way, it is in general no ground for depriving the plaintiff of relief that the defendant will suffer more by the issue of an Injunction than the plaintiff, if his claim could be reduced to money, would suffer by being awarded merely money-compensation.[93] It lies upon the defendant to show and

---

87. *Dyneshwar* v. *Atmaram*, A.I.R. 1980 Goa. 30, *Bhikhari* v. *Baidyanath*, 1979 Cut L.T. 433, *Chandra Nath Pal* v. *Sree Gobind Chowdhuri*, 6 C. W. N., 308 (1900).

88. *Benode Comaree Dossee* v. *Soundaminey Dossee*, 16 C. 252 (1889) : but *see Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B., 137, 139 (1877).

89. *The Shawnugger Jute Factory Company* v. *Ram Narain Chatterjee*, 14 C., 189, 200 (1886).

90. Kerr, Inj.; 44 see Halsbury's *Laws of England*, (4h ed). vol., 24, Para 951.

91. *Maganlal* v. *Chhotalal*, 26 B., 136 (1901).

92. Kerr, 27, *Krishna Chandra* v. *Hem Chandra*, 21 C. L. J. 469 (1915); *Esso Petroleum Co. Ltd.* v. *Kingswood Motors*, (1973) 3 W.L.R. 780.

93. *Jamnadas Shankarlal* v. *Atmaram Harjiwan*, 2 B., 133, 139, (1877).

CENTRAL LIBRARY

prove the defence that the right has been lost by reason of acquiescence or delay.[94] A mandatory injunction should not be granted against a trespasser compelling him to come on the land on which he had trespassed to remove an encroachment made thereon by him.[95]

A mandatory, like any other, injunction should be enforced by execution of the decree in which it was given. A suit will not lie for damages for non-compliance with the Injunction.[96]

Relief which may be given in a suit for an Injunction.—Where a suit is brought to obtain an injunction and the facts disclosed are such that the plaintiff is entitled to some relief, that relief will be one of three ascertained forms, namely: (*a*) an injunction; (*b*) damages; (*c*) a combination of an injunction with damages. The Court cannot compel a plaintiff who is entitled to its aid by Injunction or damages to accept some other form of relief than those abovementioned.

(i) An Injunction.—If upon a consideration of all the facts and of the principles regulating the grant of preventive relief an injunction is the appropriate remedy, the Court will issue an Injunction. temporary or perpetual. aptly formed to meet the requirements of the particular case. The granting of preventive relief is entirely within the discretion of the Court.[97] The principles upon which the Court exercises this discretion have been dealt with in the preceding pages.[98]

(ii) Damages.—If the Court be of opinion that looking to these principles the case is not one for which an injunction is a fitting remedy, it has a discretion to grant damages in lieu of an injunction.[99] The grounds upon which this discretion to grant damages in lieu of an injunction should be exercised have been the subject of discussion in several reported Indian cases. Formerly the Court of Chancery had no inherent power to ascertain the amount of damages sustained by reason of tortious acts unattended with profits to the wrong-doer. The jurisdiction to give and assess damages in respect of such acts was first conferred on the Court of Chancery[1] by Lord Cairns' Act, 21 and 22 Vict., c. 27.

By that Act the Court of Chancery was empowered, if it thought fit, to award damages instead of granting an Injunction in cases falling within its jurisdiction, and since that Act it has had to exercise the same discretionary power when the question has arisen whether damages or preventive relief should be granted. The particular effect of that Act does not appear to have

---

94. *Nandkishor Balgovan* v. *Bhagubhai Pranbalabdas* 8 B., 98 (1883).

95. *Navroji* v. *Dastur*, 28 B., 20 (1903).

96. See *Venkata Niloba* v. *Kishan Dadarao*, 1983 M.L.J. 1105 (Remedy under or: 39 r. 24 read with Or. 21 r. 32(1), C.P.C.). *Jawatri* v. *H.A. Emile*, 13A, 98 (1890).

97. Act 47 of 1963, s. 36.

98. v. *ante*, §§ 29—32.

99. *Bodi Reddy* v. *Appu Goundan* (1970)2 M.L. J. 577 (Damages may be awarded instead of mandatory injunction directing the difendant to demolish the structure already constructed.) *Land Mortgage Bank of India* v. *Ahmedbhoy*, 8 B., 70 (1883).

1. Kerr, Inj., 671. Joyce, Inj. 593—595.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

received much consideration until the case of *Aynsley* v. *Glover*.[2] The full discussion it then received makes it unnecessary to refer to earlier authorities. The Master of the Rolls, in that case, after discussing the earlier decisions which doubtless reveal a great variety of opinions, expresses his own view to be "that whenever an action can be maintained at law, and really substantial damages, or perhaps I should say considerable damages, can be recovered at Law, there the injunction ought to follow in Equity ; generally, not universally." He then refers to Lord Cairns' Act and points out that the Act "gives a new power to the Court purely discretionary to substitute damages" in cases in which "before the passing of the Act this Court would have granted an Injunction," expressing an opinion that it is "a reasonable discretion[3] and must depend upon the special circumstances of each case whether it ought to be exercised" ; and as an illustration of its application he refers with approval to *Curriers' Company* v. *Corbett*[4] as showing that the Court will take into consideration the fact of the injury to the plaintiff being of a slight nature (although sufficient to sustain an injunction) as contrasted with the serious damage to the defendant. The subsequent decisions by the Master of the Rolls, *Smith* v. *Smith*[5] and *Krehl* v. *Burrell*,[6] afford further illustrations of the principle on which the discretion vested in the Court of Equity of awarding damages in lieu of an injunction should be exercised. In *Holland* v. *Worley*[7] Mr. Justice Pearson, after referring to the above decisions by Sir G. Jessel, laid down the rule which he said he thought would be in accordance with the view of the Master of Rolls, that in those cases (of infringement of easements) where the injury would not be so serious, where the property might still remain the plaintiff's and be as substantially useful to him as it was before, the Court may, if it thinks fit, exercise the discretion given it by the Act."[8]

In the case last cited it was, however, said[9] that the question whether damages are a sufficient compensation does not present itself to the Courts in India in precisely the same manner and form as it does to a Court of Equity in England. This latter Court in awarding damages under Lord Cairns' Act exercises a discretionary power in departing from the specific relief which it had hitherto exclusively afforded, and could scarcely be expected to take so broad a view of the subjects as the Courts of India whose duty it is under the Specific Relief Act not to grant an injunction where damages afford adequate compensation. In Britain as a good working rule, damages in lieu of injunction may be given (1) where the injury to the plaintiff's legal right is small ; (2) where that injury is capable of being estimated in money ; (3) where that injury can be adequately compensated by a small money payment ; and (4) where the case

---

2. 18 Eq., 546 at pp. 553, 554 & 555.

3. "This discretion must be a judicial discretion, exercised according to something like a settled rule, and in such a way as to prevent the defendant doing a wrongful act and thinking he could pay damages for it, *per* Sir G. Jessel, M. R., in *Smith* v. *Smith*, L. R., 20 Eq. 505.

4. 2 Dr. & Sm. 355.

5. 20 Eq., 500, at p. 505.

6. 7 Ch. Div., 551 at p. 554.

7. 26 Ch. Div., 585 at p. 587.

8. Per Sargent, C. J., in *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B, 252 (1888), at pp. 260, 261. The passage has been slightly abridged in the text.

9. *Ib. at* p. 261.

CENTRAL LIBRARY

is one in which it would be oppressive to the defendant to grant an injunction. But this rule is not universal one. In cases where the above conditions are not fulfilled, the injunction must be granted. In the case of a continuing actionable nuisance, the jurisdiction to award damages in lieu of an injunction ought only to be exercised in very exceptional cirucmstances.[10]

The power of the Courts of India to grant a perpetual injunction is determined by the Specific Relief Act (47 of 1963), s. 38[11]. It is to be remembered that this limitation of the power of granting an Injunction is identical with the conditions upon which the Court of Equity in England has always asserted the jurisdiction of granting preventive relief in cases of this nature. In *Attorney-General* v. *Nichol*,[11] Lord Eldon says 'that the foundation of the jurisdiction appears to be that injury to property which renders it in a material degree unsuitable for the purposes to which it is now applied, or lessens considerably the enjoyment which the owner now has of it. The Court considers that injury of this nature does not admit of being measured and redressed by damages.' In *Straight* v. *Burn*.[12] Lord Justice Giffard says : 'I take the course of this Court to be, that when there is a material injury to that which is a clear legal right, and it appears that damages, from the nature of the case, would not be a complete compensation, the Court will interfere by Injunction'.[13]

In *Hubbard* v. *Pitt*, (1973)3 All E.R. 1 (C.A.) pickets were organised outside the office of the plaintiff to protest against redevelopment of property of the plaintiff. An action was brought against the defendants being the picketters for an injunction restraining them from picketing, at the plaintiff's premises and from conspiring to do so etc. Although a prima facie case was established, the Court had to consider whether the balance of convenience lay in favour of granting an injunction or refusing the interlocutory relief sought and it was held that balance of convenience was clearly in favour of the grant of an injunction since there was a real prospect that the continuance of the defendants' activities outside the plaintiff's premises would seriously interfere with the plaintiffs' business and that damages would be an inadequate remedy, even if the defendants could pay damages.

The Specific Relief Act whilst laying down the general principles upon which such relief may be granted, still leaves it entirely in the discretion of the Court whether the Court will give relief by injunction or damages, and in so doing, has placed the Court very much in the same position as the Court of Chancery found itself after the passing of Lord Cairns' and Mr. Rolt's Acts, which enabled that Court to award the plaintiff compensation in lieu of, or in conjunction with, preventive relief. Sir G. Jessel discusses the effect of the for-

---

10. Halsbury's *Laws of England* (4th ed.) Vol. 24, *para* 935 ; which provides that the Court may grant such an Injunction when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property ; and where the invasion is such that pecuniary compensation would not afford adequate relief.

11. 16 Ves. Jun., 342. And see *Jackson* v. *Duke of Newcastle*, 3 De G. & J., 275, *per* Lord Westbury, whose statement of the law was adopted by Lord Hatherly in *Dent* v. *Auction Mart Co.*, L. R., 2 Eq., 238 ; cited in *Land Mortgage Bank* v. *Ahmedbhoy Habibbhoy & Kesowram Ramanand*, 8 B., at p. 67 (1883)

12. 5 Ch. App., 163 at p. 167.

13. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 252 (1888) at pp. 259. 260.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

mer Act upon the practice of the Court, in *Aynsley* v. *Glover*.[14] He says: 'It will deserve the most serious consideration hereafter as to what class or classes of cases this enactment is to be held to apply. Although in terms so wide and so long, it never could have been meant, and I do not suppose it will ever be held to mean, that in all cases, the Court, of its own will and pleasure or at its own mere caprice, will substitute damages for injunction. I am not now going, and I do not suppose any Judge will ever do so, to lay down a rule which, so to say, will tie the hands of the Court. The discretion being a reasonable one should, I think, be reasonably exercised, and it must depend upon the special circumstances of each case whether it ought to be exercised. The power has been conferred, no doubt usefully, to avoid the oppression which is sometimes practised in these suits by a plaintiff who is enabled—I do not like to use the word 'extort'—to obtain a very large sum of money from a defendant merely because a plaintiff has a legal right to an injunction; I think the enactment was meant in some sense or another to prevent that course being successfully adopted. There may be some other special cases to which the Act may be safely applied, and I do not intend to lay down any rule upon the subject.[15]

"No doubt the jurisdiction of the Court of Chancery in question of relief by injunction, etc. as stated by Lord Eldon in *Attorney General* v. *Nichol*,[16] and explained by V.C. Wood in *Dent* v. *Auction Mart Co.*,[17] and by Sir G. Jessel in *Aynsley* v. *Glover*,[18] is treated as existing where substantial damages would be given by a Court of law.[19] But the Courts in India have the jurisdiction both of a Court of Law and Equity, and in the exercise the discretion will regard the 'materiality' of the injury in the sense in which that expression was used by Sir G. Jessel in *Smith* v. *Smith*,[20] and which as pointed out by Fry, J., in *National Provincial Plate Insurance Company* v. *Prudential Insurance Company*,[21] means something more than is sufficient to give the Court jurisdiction to grant an injunction and may depend on all the circumstances of the case."[22]

---

14. L. R., 18 Eq., 544.

15. *Land Mortgage Bank* v., *Ahmedbhoy*, 8 B. at pp. 70, 71 (1883). *per* Sargent, C. J.

16. 16 Ves., 342.

17. L. R., 2 Eq., 238.

18. L., R., 18 Eq., 544

19. See *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B. (1883), at p. 97. "An Injunction can be granted wherever substantial damages could be awarded under the English Law," *per* West, J.; and in *Aynsley* v. *Glover* at p. 555, Jessel, M. R., points out that the word "substantial" is not used in the sense of "enormous." If the injury complained of is of a material nature, the Court will grant an Injunction; *Holyoake* v. *Shrewsbury and Birmingham Railway Co.*, 5 Railw. Cas., 421; *Krehl* v. *Burrell*, 7 Ch. D., 551: 11 Cr. D., 146; *Holland* v. *Worley* 26 Ch. D,. 578; *Greenwood* v. *Hornsey*, 33 Ch. D., 471; otherwise where a money-payment is an adequate consideration: *Allen* v. *Ayres*, W. N., 1884, 242; *Holland* v. *Worley*, supra.

20. L. R., 20 Eq., 500.

21. 6 Ch. D., 768.

22. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., at p. 484 (1894); so an Injunction has been refused, though at the same time it was held that the plaintiff was entitled to substantial damages; *Dhanjibhoy* v. *Cowasji Umrigar* v. *Lisboa*, 13 B., 252, 264 (1888).

CENTRAL LIBRARY

Acquiescence is one of those circumstances, and its existence may induce the Court to give damages instead of an injunction[23] or may preclude the recovery of even nominal damages.[24]

Section 38, of the Specific Relief Act states the cases in which a perpetual injunction may be granted where the defendant invades or threatens to invade the enjoyment of property. In applying these provisions the Courts will do well to be guided by the decisions of the Court of Chancery in England which, it cannot be doubted, are the source from which the above provisions have been drawn.[25] And the same general principles apply to the granting of a temporary, as to a perpetual, injunction.[26] But in following these provisions the terms of the Indian Acts and Codes and the constitution of the Indian Courts must not be overlooked. Moreover, as pointed out by West, J.,[27] it is not easy to reconcile all the English cases on the question of injunction as opposed to damages; the question is one of degree. and the whole of the circumstances are seldom or never stated.

The Court has under that section jurisdiction to grant an injunction in those cases where pecuniary compensation would not afford adequate relief. The expression "adequate relief" is not defined, but it is probably used in the sense in which Kindersley, V.C., used it in *Wood* v. *Sutcliffe*[28] as meaning "such a compensation as would, though not in *specie*, in effect place the plaintiffs in the same position in which they stood before." It does not, however, follow that in such cases a plaintiff is entitled as of right to an injunction. Under the Specific Relief Act the Courts are given a discretion to grant or withhold an injunction, as in England they have a discretionary power to award damages in lieu of an injunction. In this view of the Law, the Court has to consider, in each case not merely whether the plaintiff's legal right has been infringed, or even materially infringed, but also whether under all the circumstances of the case he ought to be granted an Injunction as the proper and appropriate remedy for such infringement.[29] It must appear from the circumstances in evidence in each case that the interference or obstruction complained of is not a trivial, but a substantial, injury which is not capable of being fully estimated in pecuniary damages as respects the future as well as the past.[30]

Even if it be difficult to suppose that pecuniary damages would not

---

23. *Ranchhod Jamnadas* v. *Lallu Haridas*, 10 Bom. H. C. R., 95, 97 (1873); *Sayers* v. *Collyer*, 28 Ch. D., 103.

24. *Kelsey* v. *Dodd*, 52 L. J., Ch. 34.

25. *Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy & Kesowram Kamanand*. 8 B., at p. 67 (1883), *per* Sargent, C.J.

26. *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B., 266 279 (1881). v. *ante* p. 6.

27. *Nandkishor* v. *Bhagubhai*, 8 B., at pp. 97, 98 (1883).

28. 21 L. J., Ch., at p. 255.

29. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B., (1894), at p. 488, *per* Farran, J.

30. *Ponnusawmy Tevar* v. *The Collector of Madura*, 5 Mad. H. C. R., 6, 24 (1869), and *see at* p. 25, where it is said, "further the injury is one of a constantly recurring kind and from the very nature of the easement (of water) it would be impracticable to estimate an adequate compensation in pecuniary damages as a proper substitute for the relief by Injunction.

CENTRAL LIBRARY

afford adequate relief. it should be shown that there is some standard for ascertaining them.[31] If there be no such standard and the case is otherwise a proper one, an injunction will issue.[32] But it is not sufficient to prevent the granting of damages that the enquiry is one of difficulty and the result must to a great extent be a matter of opinion, provided that there are *data* upon which experienced persons may form an estimate.[33] Section 38(3)(b) of the Specific Relief Act has application to such cases[34] where there is no possible standard with reference to which the contemplated injury can be compensated rather than, for example, to a case of injury to property like a house occupied by its owner in danger of being deprived of its ancient light.[35] As pointed out in the case last cited, the threatened disclosure of a confidential communication is an illustraion of the class of cases referred to in section 54, clause (*b*).

As already observed, the determination of the question whether relief by injunction or by damages shall be granted depends upon the circumstances of each case. Some examples, however, of the application of these principles are here given. Thus it was held that the re-erection of his house by the defendant, notwithstanding notice from the plaintiff, so as to darken some of the principal rooms of the plaintiff's house, making them unfit for occupation during the day without artificial light, was an injury which could not be adequately redressed by an award of damages.[36] So also any act by which the control of light and air are taken out of the hands of the person entitled to them, or by which the access of light and air to the window of a dwelling-house is interfered with, is *prima facie* an injury of a serious character. When a defendant, therefore, without leave or license, took possession, of the plaintiff's window as completely as if he had blocked it up altogether, it was held that the injury was not reparable by damages.[37]

But when the plantiff has no other than a pecuniary interest in the premises and would always have been satisfied with a liberal *solatium* for his violated rights, damages may properly be substituted for an injunction.[38]

An obstruction to a right of way has been held to be a real and subs-

---

31. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., at p. 48.

32. Act 47 of 1963, s. 38 (3) (b)

33. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, supra, at p. 72.

34. And see *Ramanadhan* v. *Zamindar of Ramnad*, 16 M., 407, 409 (1893).

35. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. (1894), at p. 489, *per* Farran, J. So the Court has directed an inquiry to ascertain the damage where the nuisance was an obstruction of the plaintiff's light: *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B. (1883) at p. 72.

36. *Jamnadas, &c.*, v. *Atmaram, &c.*, 2 B., 133 (1877); but the remedy depends upon the facts proved, *Ranchhod* v. *Lallu*, 10 Bom. H. C. R., 95 (1873) ; *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B., 252 (1888); *The Land Mortgage Bank* v. *Ahmedbhoy*, 8 B,. 71, 72 ; *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., 252 (1889); *Nasarbhai* v. *Munshi*, 16 B., 533 (1891).

37. *Nandkishor* v. *Bhagubhai*, 8 B., 95 (1883).

38. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., at p. 91 (1883).

CENTRAL LIBRARY

tantial inconvenience entitling to an injunction.[39] A forced joint occupation of an undivided dwelling-house of a Hindu family by an intruder, even though he be an owner, against the will of the resident Hindu coparcener, is an injury for which pecuniary damages would not be compensation.[40] If the Court sees that the damage caused to the plaintiff by the act complained of is unsubstantial and trifling, it will hesitate upon imposing any obstacle in the way such as Railway serving the interests of the general public.[41] Where certain persons sued for an injunction and for a declaratory decree as to their title to free access with their patrons to certain sacred shrines and to receive presents from their patrons unfettered by certain rules which had denied this title, it was held that they were entitled to such a decree as also to further relief by way of permanent injunction, as the defendants had threatened to invade their enjoyment of property, and the invasion was such that pecuniary compensation would not afford adequate relief.[42]

In a suit for a mandatory injunction to remove a wall, it was said that if the plaintiff had quietly acquiesced in the building of it and had only objected on its completion, the Court should award him damages only.[43]

In the case of obligations arising from contract the Court will be guided by the rules and provisions contained in Chapter II of the Specific Relief Act relating to specific performance ; and will, if the case be otherwise proper, grant an injunction where it would decree specific performance.[44] It follows, therefore, that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced.[45] And as a contract, which is one for the non-performance of which compensation in money is an adequate relief, cannit be specifically enfocred,[46] so an injunction will not be granted to prevent its breach.[47] When a contract comprises both an affirmative and a negative agreement, though the Court may be unable to compel specific performance of the first, it may yet grant an injunction to perform the latter agreement.[48] A person may *contract* himself out of the remedy by injunction, as where he has agreed that the remedy in respect of the breach of an agreement shall be in damages ; in which case the Court will not grant an injunction.[49] *Prima facie* any purely mercantile contract is one admitting of compensation in money.[50] But, of course, it may be shown that under the particular circumstances the case is otherwise.

---

39. *G. I. P. Railway* v. *Nowroji Pestonji*, 10 B., 390 (1885).
40. *Anantnath Dey* v. *Mackintosh*, 6 B. L. R., 571, 573 (1871).
41. *G. I. P. Railway* v. *Nowroji Pestonji*, 10 B., 390 394 (1885).
42. *Kalidas Jivram* v. *Gor Parjaram Hirji*, 15 B., 309 (1890).
43. *Ranchhod Jamnadas* v. *Lallu Haridas*, 10 Bom. H. C. R., 95, 97 (1873)
44. Act 47 of 1963, s. 38. As to the cases in which it will decree specific performasce, v. *ib.*, Ch. II of the Act.
45. *Ib.*, s. 41 (e).
46. *Ib.*, s. 14 (1) (a) ; *See* Nelson, p. 163.
47. Act 47 of 1963, s. 41(e).
48. *Ib.*, s. 42.
49. *Mancherji Furdoonji Mehta* v. *Noor Mahomedbhoy Jarrybhoy Pirbhoy*. 17 B., 711 (1893).
50. *Haji Abudl Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5, 7 (1881).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

If money-compensation is the proper form of relief, it should obviously be compensation measured by the right infringed. It is only in respect of this that the plaintiff is competent to sue, and suing on a limited ground, a plaintiff cannot be entitled to compensation on one greatly more extensive.[51] In order that damages should be an adequate subsititute for an injunction, they must cover the whole area which would have been covered by the injunction and must comprise as well the damages for wrongful acts continued up to the time of trial as for those which had taken place before the issue of the writ.[52] If the wrongful act has come to an end before the trial, the Court has jurisdiction nevertheless to assess the whole of the damages accrued.[53] When an action is brought for an injunction in respect of a threatened injury and no actual wrong has been committed by the defendant, the Court has no jurisdiction to give damages in substitution for such injunction.[54]

(a) If the plaintiff be held entitled to damages, they must be given.—If the Court be of opinion that a plaintiff is entitled to relief, but that damages and not an injunction is the appropriate remedy, it must award damages, or order an enquiry as to damages. It cannot dismiss the plaintiff's suit. In England, formerly, if a bill in Equity were dismissed, the plaintiff would have had his suit at law for damages. In this country, however, a new suit would not lie, and consequently when the plaintiff is held entitled to a remedy the appropriate remedy should be awarded.[55] It is no objection to the grant of damages that they have not been specifically prayed for; they may be had under the prayer for general relief[56] Nor is the right to damages lost because performance has been obtained from the defendant before the suit comes to a hearing.[57]

(b) Assessment of, and enquiry as to, damages.—The parties either in the Original or Appellate[58] Court may agree as to the amount which shall be payable as damages. Thus a sum may before judgement be agreed upon as satisfying the claim which the plaintiff is entitled to as damages, it being left to the decision of the Court to deal with the question as to whether an injunction should or should not be granted under the circumstances of the case; or a similar agreement may be entered into, leaving it to the decision of the Court whether the plaintiff be entitled to any relief whether by injunction or damages.[59] If there be no agreement as to the amount of damages, the Court may itself award damages to the plaintiff, or order an enquiry

---

51. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy* 8 B., 35, 93 (1883).
52. *Fritz* v. *Hobson*, 14 Ch. D., 543, 556, 557.
53. *Ib.*
54. *Dreyfus* v. *Peruvian Guano Company*, 43 Ch. D., 316.
55. *Calkianji Harjivan* v. *Narsi Tricum*, 19 B., 764, 770 (1895).
56. *Catton* v. *Wyld*, 32 Beav., 266; *Betts* v. *Neilson*, 3 Ch. App., 441; *Stanley* v. *Shrewsbury*, 19 Eq., 616. See *Nathan* v. *Mc Laboratories* A.I.R. 1975 Mad. 189 (Amedment of plant seeking relief for damages in lieu of or in addition to injunction granted).
57. *Cory* v. *Thames Iron, &c., Company*, 11 W. R. (*Eng.*). 589.
58. *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., at pp. 262, 64 (1889).
59. *Ib.*, at p. 264.

CENTRAL LIBRARY

as to damages.[60] An enquiry as to the damages will not, as leading to greater expense, be directed where there is no difficulty in assessing the damages, but the Judge will himself assess them at the trial.[61] Where enquiry as to damages would have been costly and in any case a decree for damages against the defendant would not have been of much value, the Court, under the particular circumstances of the case, awarded nominal damages only.[62] Where no issue as to damages is framed or tried by the lower Court, the Appellate Court may refer the case back to the first Court for the trial of an issue as to damages under Order 41, rule 25 of the Civil Procedude Code[63] (now amended by Act 104 of 1976); or may itself determine the same.[64]

(iii) Combination of damages and Injunction.—Damages may be combined with a limited injunction. Though this form of relief, which is expressly provided for by Lord Cairns' Act, is not mentioned by the Specific Relief Act, it may yet be awarded where the circumstances of the case so require.[65]. So where in a suit in respect of a nuisance the Original Court had granted such an injunction the order was upheld by the Appellate Court, which observed as follows :—"In the present case damages have been combined with a limited Injunction. This particular combination of relief is not expressly provided for in the Specific Relief Act. But by section 36 of the Act, 'Preventive relief is granted at the discretion of the Court.' By section 38(3)(d) 'an Injunction may be granted to prevent a multiplicity of judicial proceedings,' which embraces as well repeated suits by the same plaintiffs as a series by different plaintiffs. On the other hand. section 41(h) says an Injunction cannot be granted 'when eually efficacious relief can certainly be obtained by any other usual mode of proceeding.' A mere award of damages in this case would not prevent future claims for future injuries. Preventive relief may, therefore. properly be given, but being given to a certain extent, it appears that for the residual injury which, as the learned Judge below has found, is really small, damages will afford an efficacious relief—equally efficacious as relief, though not so efficacious in delivering over the defendants to the tender mercies of the plaintiffs' company. The judgment of Bramwell, B., in the *Stockport Waterworks Company* v. *Potter*,[66] shows that it is an important ingredient in the wrong occasioned by carrying an offensive business, if all possible remedial measures are not adopted. We think this Court may prescribe such measures as the condition of continuing a business, and give damages for the inevitable injury where these will suffice, though Rolt's Act and Lord Cairns' Act are not in force here. At any rate, the defendants, who are the persons to be affected by the Injunction, may, if they dislike the combined remedy, avoid it by submitting to an Injunction

---

60. *Callianji Harjivan* v. *Narsi Tricum*, 19 B., at p. 770 (1895).
61. Kerr, Inj., 41.
62. *Callianji Harjivan* v. *Narsi Tricum*, 19 B., 764, 770 (1895).
63. *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C., at pp. 262, 264 (1889).
64. *Callianji Harjivan* v. *Narsi Tricum*, 19 B., at p. 770 (1895), *see* Civ. Pr. Code, O. 41, r. 25,
65. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy and Kesowram Ramanand*, 8 B., at pp. 77, 91 (1883).
66. 3 H. L., 326: 31 L. J. Ex. 16.

CENTRAL LIBRARY

which will apparently close their factory. If the defendants submit, the plaintiffs' company cannot complain that in addition to damages it obtains a further discretional relief, leaving it to the necessity of further litigation only should a reasonable use of their premises be exceeded in future by the defendants. The modified conditional injunction framed by the learned Judge below is calculated in its intention to provide the requisite remedy in this case by reducing the annoyance caused by the working of the mill to such a moderate, and perhaps irreducible, minimum as will be fairly compensated by damages for the premises occupied by the plaintiffs' company affected by it. It will only be necessary to mould the wording so as to distinctly provide against any increase of smoke, cotton, fluff or noise of machinery beyond what subsisted at the date of the decree (see *Goldsmith* v. *Tunbridge Wells Improvement Commissioners*,[67] and to add that the injunction does not free the defendants from any necessity they may be under of working always so as to cause the least annoyance reasonably possible to the occupants of the premises with respect to which the decree is made. It may be that inventions will be made by which the now inevitable annoyance may be easily diminished; and should a right then arise for the neighbours to a working of the mill so as to be less offensive, they ought not to be precluded from that right by an injunction intended for their benefit.[68]

34. If relief be given it must be of one or other of the preceding kinds. —The Court may refuse relief or give relief either by injunction, or damages. or by a combination of both; but it cannot compel a plaintiff, who is entitled to its aid, to accept some other form of relief. So in the undermentioned case[69] the plaintiff complained that the defendants intended to build so as to obstruct the passage of light and air through an ancient window in his house, and render a room therein unfit for use, and prayed for a perpetual injunction restraining the defendant from so building. The Subordinate Judge granted the Injunction as prayed. The defendants appealed to the Joint Judge, who amended the lower Court's decree by ordering the removal of the injunction, and directing in its stead a new window to be opened by the defendant in the plaintiff's house to the east of the window in question, the light into which would not be interfered with by the defendant's house. The High Court on appeal reversed this decree, holding that the plaintiff had an absolute and indefeasible right to the easement which he had acquired, and the only possible question was whether an Injunction or damage was the appropriate remedy order the circumstances of the particular case, and that the form of relief which had been given by the Joint Judge to the plaintiff was one which the latter could not be compelled to accept.

---

67. I., R., 1 Ch., 349 ; s. c, 35 L. J, Ch. 382.

68. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy and Kesowram Ramanand*, 8 B., at pp. 91—93 (1883) ; it has, however, also been held that if the title to an Injunction depends upon the fact that there is no proper compensation in damages, the latter will not be granted in addition to the Injunction ; *Eardley* v. *Granville* 24 W. R. (Eng.). 528.

69. *Kadarbhai* v. *Rahimbhai*, 13 B., 674 (1889).

CENTRAL LIBRARY

CHAPTER III

PRACTICE RELATING TO INJUNCTIONS

Synopsis

35. Means by which an Injunction obtained.
(i) Injunctions are granted upon suit;
(ii) in urgent cases by motion *ex parte* without notice, and before or after appearance;
(iii) in other cases by motion for a rule *nisi* or upon notice before or after appearance.
36. *Interim* orders.
37. Injunction upon terms.
38. Evidence in support of application.
39. Hearing of application.
40. Discharge, variance, and dissolution of Injunction.
41. Appeal in the matter of Injunctions.
42. Reference, Revision and Review in the same matter.
43. Costs, Court-fees.
44. Enforcement of orders and decrees granting Injunctions.
45. Limitation.

35. **Means by which an Injunction is obtained.**—The means by which an Injunction is obtained as also all other rules of practice governing the issue of this form of relief, constitute a portion of the general law relating to the procedure to be followed in civil suits, and are to be sought for in the rules and practice of the High Courts and the provisions of the Civil Procedure Code. The rules relating to the obtaining of temporary Injunctions only are dealt with in this Chapter. Perpetual Injunctions are obtainable by decree made at the trial, and the practice relating thereto is the same as that which governs the making of decrees granting other than specific relief.

(i) **Injunctions are granted upon suit.**—An Injunction will, as already observed, only be granted upon, or in, a suit praying for that or other relief. There must be a pending action in which the Injunction may be obtained : [1] though possibly in extremely urgent cases the Court may, in accordance with the English practice, grant an Injunction before the filing of a plaint upon the plaintiff's undertaking to institute a suit forthwith. [2] In actions for an Injunction, as in other actions, the rule applies that all persons interested in the subject-matter should be made parties to the proceeding on either the one or the other side of the record. [3] As a general rule, an Injunction should be specifically prayed for

---

1. *See*, Halsbury's *Laws of England* (4th ed.) Vol. 24, para 1041, High, *Inj.*, § 1566.

2. v. *ante*, § 24, f. n. 5 ; *see* Halsbury's *Laws of England* (4th ed.), Vol. 24, paras 1051.

3. § 17 *ante* ; Spelling's *Extraordinary Relief*, § 970 ; High, *Inj.*, §§ 1547—1564 ; Injunctions against Municipal bodies, *Chabildas* v. *Municipal Commissioner of Bombay*, 8 Bom. H. C. R., 85 (1871) ; *Hormasji Karsetji* v. *Peddar*, 12 Bom. H. C. R., 199 (1875) :

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

when the obtaining of that relief is a substantial object of the action, though leave will be given to amend the plaint by adding a prayer for an Injunction and an Injunction may be granted at the hearing of the cause though not prayed for in the plaint.[4] So after decree parties to the suit or persons who have or may come in under the decree will be restrained from taking proceedings contrary to the decree or violating its spirit without any prayer for an Injunction.[5] The provision of section 80(1) of the Civil Procedure Code for service of notice with cause of action is mandatory and a suit will be bad for non-compliance of the said provision. A suit to obtain an urgent or immediate relief against the Government or any public officer may be instituted with the leave of the Court without serving any notice as required by sub-section 1 of Section 80 as provided under sub section 2 of Section 80 as amended by Section 27 of CPC Amendment Act, 1976.[6] When the suit has been duly instituted a summons is issued to the defendant to appear and answer the plaintiff's claim.

(ii) **In urgent cases by motion ex parte without notice, and before or after appearance.**—As a general rule, notice of an application for an Injunction must be given to the opposite party. But in cases where the object of granting the Injunction would be defeated by delay, in urgent cases of threatened mischief and in cases where notice of an intention to apply for an Injunction might lead to the commission of the act before the time for hearing a motion on notice, an Injunction may be granted *ex parte* before or after the appearance of the defendant to the suit.[7] In very pressing cases an Injunction may be applied for *ex parte* before service of the writ of summons.[8]

An Injunction is granted *ex parte* and without notice to the opposite party only in cases where considerable mischief might ensue, if the issue of the process were delayed until notice should be given to the party against whom it is sought. The power to issue an *ex parte* Injunction no doubt exists but the greatest care should be employed in its exercise. There may be instances where the injury is so great that an *ex parte* Injnuction is necessary; but the Court should if possible always require notice, however short, to be given.[9] "Such an Injunction on the application of one party, and without previously giving to the person to be affected by it the opportunity of contesting the propriety of its issuing, is a deviation from the ordinary course of justice, which nothing, but the existence of some imminent danger to property if it be not so granted, can justify. A case.

Municipal Commissioners for Town of Madras v. *Branson*, 3 M., 201 (1881); Public Trustees, *Shepherd* v. *Trustees of Port of Bombay*, 1 B., 132, 477 (1876). As to tenant's and landlord's respective rights of action, *see The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 87, 88 (1883).

4. Joyce, *Inj.*, 1262, 1263; Kerr, *Inj.*, 647.

5. Joyce, *Inj.*, 1263.

6. *See, State of Andhra Pradesh* v. *G. V. Suryanarayana*, AIR 1965 SC 11; *Tara Chand Agarwalla* v. *Union of India*, AIR 1983 Cal 268.

7. Civ. Pr. Code, *O.* 39, *r.* 3 as amended by Act 104 of 1976; Joyce, *Inj.*, 1261; Kerr, *Inj.*, 648, but in the absence of pressing necessity it is improper to do so. Spelling, *op. cit.*, § 1016.

8. *H.* v. *H.*, 1 Ch. D., 276; *Colebourne* v. *Colebourne*, ib., 690; *Brand* v. *Mitson*, 24 W. R. (Eng.), 524.

9. *Hari* v. *Secretary of State for India*, 27 B., 424, 451 (1903).

CENTRAL LIBRARY

therefore, of irremediable mischief impending must be made out. By this is certainly not meant necessary and inevitable destruction, but great and serious danger not capable of being averted probably, if delay be interposed. The Court with a proper jealousy has guarded the establishment of this anomalous practice by a very salutary rule which requires that a full communication should be made to the Court, which grants the Injunction, of all material facts which might influence its decision." As observed by Sir Lawrence Peel C. J., in the case already cited, the Courts have guarded the practice of *ex parte* Injunctions by the rule which requires that all material facts should be disclosed. [10]

Order 39, rule 3, C. P. C. provides that the court shall in all cases, except in serious and urgent cases, direct notice of the application to be given to the opposite party. Where the court grants an injunction *ex parte*, the court shall record the reasons for its opinion and direct the applicant to serve to the opposite party copies of the application and the plaint and all other relevant documents immediately after the order of injunction and also to file an affidavit of such service. Order 39, rule 3A, C. P. C. casts duty on the court to dispose of an application for injunction granted *ex parte* within thirty days from the date on which the injunction was granted. Where the court is unable to dispose of the same within the specified time, it must record its reasons for such inability. [11] Where a motion was made on a partial statement of the facts and the dissolution of the Injunction was resisted on a case not then made, it was said that, if the Court allowed this, it would encourage the suppression of important facts and the Court dissolved the Injunction, and held that where a fact is not communicated, which would, if communicated, have prevented the issue of an ex *parte* Injunction, the Injunction, will be dissolved, even though a fraudulent suppression be not made out. [12] Proviso to rule 4 of order 39, C. P. C. lays down that if in an application for temporary injunction or in an affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without notice, the court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice. It is a general rule, therefore, that on an *ex parte* application for an Injunction the material facts must be fully and fairly stated to the Court. [13] If the Court be of opinion upon an application *ex parte* that the case is not so urgent as to require its immediate interference, it will either grant a rule *nisi* or order notice of the application to be served on the defendant.

---

10. *Freeman* v. *McArthur*, 2 Taylor & Bell, R., 10, 25, *per* Peel, C. J. (1851). "A very mischievous and oppressive use may be made of this writ, and it is our duty to narrow its issue *ex parte* to the cases in which it is alone fitting that it should so issue," *ib.* at p. 26.

11. See, *Amiya Prosad* v. *Bejoy Krishna*, AIR 1981 Cal 351 ; *State of Orissa* v. *Orissa Oil Industries Ltd*, AIR 1982 Ori 245.

12. *Freeman* v. *McArthur* supra, at pp. 26, 28; see also *Sreemutty Sohochurry Dossee* v. *Huree Kisto Roy*, 2 Boulnois, R., 62(1859). See *Rex* v. *C. I. T., Kensington*, [1917] 1 K B 486 ; *Ratan Chandra* v. *Adhar*, 56 C W N 302 (one cannot take advantage of an *ex parte* injunction by suppression of material facts or by false statement). *A. K. Sanyal* v. (Dr) *Chitta Ranjan Basistha*, AIR 1982 Cal 412.

13. Joyce, *Inj.*, 1263, *et ibi casas*.

CENTRAL LIBRARY

(iii) **In other cases by motion for a rule nisi or upon notice before or after appearance.**—In other than urgent cases justifying the issue of an *ex parte* Injunction, application should be made after the filing of the plaint and before, or after, appearance of the defendant for a rule *nisi* which is then served upon the defendant calling upon him to show cause why an Injunction should not be awarded, when if no cause be shown, the rule is made absolute ; or, as is more commonly done, the opposite party should be served with notice of motion for a particular day. In cases where danger is imminent (though not so imminent as to justify the issue of an *ex parte* Injunction), leave will be given before the appearance of the defendant upon filing the plaint to serve a notice of motion or a short notice.[14] If the plaintiff has not a case for an *ex parte* Injunction, or for an application to serve a short or other notice of motion, then the motion for the Injunction must be brought on in the same way as other ordinary motions, namely, on the day appointed by the Court for hearing motions. After the defendant has appeared, the general rule is that an Injunction can only be moved for on notice of motion, but if the threatened danger is imminent, and would be irremediable, the Court will grant an Injunction without notice of motion.[15] The rule laid down by the Civil Procedure Code is that the Court must in all cases, except where it appears that the object of granting the Injunction would be defeated by the delay, before granting an Injunction direct notice of the application for the same to be given to the opposite party.[16]

Where an Injunction is granted without notice, the party aggrieved may apply either to have it discharged under Order 39 rule 4 of the Civil Procedure Code as amented by Act 104 of 1976 or he may appeal.[17] But the former appears to be the proper course to be taken in such a case. No appeal lies from an order refusing to issue an Injunction without issuing notice to the opposite party.[18] Notice of motion should be served on all parties interested in the question raised by the motion. Unless where substituted service is ordered, the notice is served personally, and may be served on the solicitor after the appearance of the party to the action. If upon the hearing of the motion it appears that there has been no proper service, or that service of notice has not been made on a party entitled thereto, the Court will either dismiss or adjourn the hearing of the application. The notice of motion should be entitled in the cause in which it is made and should state on whose behalf the motion is to be made, the day on which the motion is to be made, and the nature of the order asked for. Costs may be given though not asked for by the notice.[19]

36. Interim orders.—Instead of issuing an Injunction in the first instance the Court may grant an *interim* order by which the defendant is restrained until after a particular day named, liberty being given to the plaintiff to serve

---

14. Joyce, *Inj.*, 1261, 1262 ; Kerr, *Inj.*, 647. [*In Maynard* v. *Fraser*, cited in Joyce's *Inj.*, 1262, the Court gave leave to serve a notice of motion before the Bill has been filed upon the undertaking of the defendant that the Bill should be on the file when service was effected.]

15. *Ib.*

16. Civ. Pr. Code, *O.* 39, *r.* 3 as amended by Act 104 of 1976, *see* Kerr, *Inj.*, 647, *Amiya Prosad* v. *Bejoy Krishna*, AIR 1981 Cal 351.

17. *Amolak Ram* v. *Sahib Singh*, 7 A., 550, 552 (1885).

18. *Luis* v. *Luis*, 12 M., 186 (1888).

19. Joyce, *Inj.*, 1284 ; Kerr, *Inj.*, 647.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

notice of motion for an Injunction for the day before such day. *Interim* orders are temporary *ex parte* Injunctions, or *interim* restraining orders in the nature of Injunctions, which are granted when the plaintiff, not showing quite a case for an *ex parte* Injunction, without more, shows a case for giving short notice of motion for an "Injunction" and for protection in the meantime. The *interim* order is therefore an Injunction or restraining order, obtained *ex parte,* to be in force until after a day named, and required to serve a notice of motion for an Injunction on the day before that day, when the question of the right to an Injunction would be disposed of, on the notice of motion.[20] *Interim* orders are generally granted upon an *ex parte* application for such order with direction to serve notice of motion[21] or upon a motion for a rule *nisi*.

An *interim* Injunction may be applied for on the presentation of the plaint.[22] Where this had been done and Counsel appeared for the defendants and it was objected that, the application being for an *interim* Injunction, the defendants could not be heard, the Court, under the particular circumstances, considered that the defendants should be heard.[23]

Though an application for an *interim* Injunction may be rejected, the Court may grant a rule *nisi* for an Injunction in the terms as prayed.[24] An *interim* order and a rule *nisi* may be, and ordinarily are, granted at the same time.[25] And upon the hearing of the rule the *interim* order as well as the rule will either be discharged or the rule will be made absolute.[26] In the event of an offer of compromise the rule and *interim* Injunction may be ordered to stand over for a fixed time, upon the expiry of which time the rule will either be made absolute or the *interim* Injunction and rule will be discharged.[27]

37. Injunction upon terms.—An Injunction may be, and often is, given or withheld upon certain terms or conditions only, of which the most frequent is the usual undertaking as to damages. In doubtful cases where damage may be occasioned to the defendant in the event of an Injunction or *interim* restraining order proving to have been wrongly granted, the Court will require the plaintiff as a condition of its interference in his favour to enter into an undertaking to abide by any order it may make as to damages. So also the Court may require the defendant to enter into terms as a condition of withholding an Injunction.[28]

Order 39, rule 2 of the Code enacts that the Court may by order grant an Injunction under that section on such terms as to the duration of the Injunction, keeping an account, giving security or otherwise, as the Court thinks fit. So a plaintiff's application for an Injunction that the defendant be restrained from

---

20. Joyce, *Inj.*, 1304.
21. Kerr, *Inj.*, 657, Or. 39 *r.* 3 C. P. C.
22. *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5, 6 (1881) ; For interlocutory or interim injunction, see Halsbury's *Laws of England*, (4th ed.), Vol. 24, para 904.
23. *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, supra.
24. *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5, 7 (1881).
25. *Mancherji Furdoonji Mehta* v. *Noor Mahomedbhoy Jairajbhoy Pirbhoy*, 17 B., 711, 714 (1893).
26. *ib.*, at p. 717.
27. *Ib.*
28. Kerr, *Inj.*, 659. Spelling, *op. cit.*, §§ 1032, 1033.

CENTRAL LIBRARY

taking possession under a decree of an undivided moiety of a family dwelling house was granted on the terms that he should offer in his plaint by an amendment to be made for that purpose, or should otherwise undertake, to pay the defendant, in the event of his title being established, such compensation for being kept out of possession *pendente lite* as the Court might think fit.[29] And in a suit to restrain a threatened ejectment of the plaintiffs from a dock belonging to the defendants, an Injunction was in the Court of first instance granted restraining the defendants until the hearing of the cause from bringing any suit for the recovery of possession of the dock or taking any steps to recover possession on the plaintiff's undertaking, until further order, to pay into Court monthly a certain sum to the credit of the cause and undertaking to abide the order of the Court as to the fair amount of rent to be paid to the defendants for the use of the dock, and to pay any damages which the defendants might sustain by reason of the order, and further to give over to the defendants full and complete possession of the dock on a date named.[30] Upon appeal the temporary Injunction in the last cited case was modified and the undertaking varied. The Court refused to restrain the defendants from bringing a suit to recover possession, but restrained them from executing any decree which they might obtain therein until the plaintiffs should have had a reasonable time within which to complete the repairs of and to remove a vessel of theirs which was in the dock at the date of the suit, and, upon the plaintiff's undertaking to give the defendants an immediate decree for possession upon a plaint for that purpose being filed, the defendants were restrained from executing such decree and from ejecting the plaintiffs from, or interfering with the plaintiff's possesson of, the dock, or interfering with the plaintiff's vessel until a date named.[31] And so an Injunction was granted, until the hearing, restraining the defendant from further proceeding with a building upon the terms of the plaintiff submitting to obey any order the Court might make as to loss or damage that might be caused to the defendant by making such order.[32] And in a case of breach of contract of personal service the Court granted a temporary Injunction restraining the defendant from serving others than the plaintiff on the terms that the latter should consent to retain him in his employ.[33] Where a suit for an Injunction was dismissed and, pending the appeal, the plaintiff applied for a temporary Injunction under the old section 492 (now represented by O. 39, r. 2 as amended by Act 104 of 1976) of the Code, the Appellate Court granted such Injunction upon the terms that security should be given by the applicant.[34]

The undertaking is ordinarily given by counsel or pleader on behalf of the party for whom he appears,[35] or by the party appearing in person and forms part of the order of Injunction.[36] On proof of breach of a public statute the

---

29. *Anantnath Dey* v. *Macintosh*, 6 B. L. R., 571, 574 (1871).
30. *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352, 361 (1875).
31. *Moran* v. *River Steam Navigation Company*, supra at p. 366.
32. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H. C. R., 181, 184 (1871) ; *Chandra Nath Pal* v. *Sree Gobind Chowdhury*, 6 C. W. N., 308 (1900).
33. *Madras Railway Company* v. *Rust*, 14 M., 18, 22 (1890).
34. *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80, 83 (1887).
35. *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352, 361, 366 (1875) ; *Chandra Nath Pal* v. *Sree Gobind Chowdhury*, supra.
36. Kerr, *Inj.*, 659.

CENTRAL LIBRARY

Court is not bound to grant an Injunction but may first give defendants reasonable time to comply with the statute. [37]

In a report by the Monopolies Commission in U. K. pursuant to a reference made by the Secretary of State for Trade and Industry under Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948 it was held that the prices charged by the companies in respect of two tranquilising drugs known as 'Librium' and 'Valium' should be substantially reduced. The report was placed before Parliament and subsequently the Secretary of State made an order in the form of a statutory instrument under the relevant section of the English Monopolies and Mergers Act, 1965, the effect of which was to reduce the prices that could lawfully be charged for the said two drugs as recommended by the commission. In due course the said order was approved by the both Houses of Parliament. The companies wrote to the Secretary of State alleging that the Commission's report was vitiated by a failure to observe the requirements of natural justice with the result that there was no valid report under the said Act. The company stated that they would accordingly disregard the order and restore the price of the drug to their original level but would pay the difference between the two prices into a special bank account to await the decision of the Court on the validity of the orders. The companies then issued a writ against the Secretary of State claiming that the orders were *ultra vires*. The secretary of State issued a writ against the companies seeking an injunction under the said Act restraining the companies from charging prices in excess of those specified in the order. The Secretary of State applied for an interlocutory injunction to the same effect but stated that he was not prepared to give the companies an undertaking as to damages. The companies were only prepared to submit to an interlocutory injunction on condition that such an undertaking was given. In dealing with the said contentions of the parties Lord Reid observed as follows :—

"It is not in doubt that in an ordinary litigation the general rule has long been that no interim injunction likely to cause loss to a party will be granted unless the party seeking the injunction undertakes to make good that loss if in the end it appears that the injunction was unwarranted. He cannot be compelled to give an undertaking but if he will not give it he will not get the injunction. But there is much authority to show that the Crown was in a different position. In general no undertaking was required of it. But whatever justification there may have been for that before 1947 I agree with your Lordships that the old rule of practice cannot be justified since the passing of the Crown Proceedings Act, 1947. So if this had been a case where the Crown were asserting a proprietary right I would hold that the ordinary rule should apply and there should be no interlocutory injunction unless the Crown chose to give the usual undertaking.

But this is a case in a different and novel field. No doubt it was thought that criminal penalties were inappropriate as a means of enforcing orders of this kind, and the only method of enforcement is by injunction. Dealing with alleged breaches of the law is a function of the Crown (or of a department of the executive) entirely different in character from its function in protecting its proprietary right. It has more resemblance to the function of prosecuting those who

---

37. *Att.-General* v. *Birmingham Tame, etc., Board*, L. R. A. C., (1912) 788, in *Phillimore* v. *Watford Rural Canal*, 2 Ch. (1913), 434 ; the operation of the Injunction was suspended for six months.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

are alleged to have committed an offence. A person who is prosecuted and found not guilty may have suffered serious loss by reason of the prosecution, but in general he has no legal claim against the prosecutor. In the absence of special circumstances I see no reason why the Crown, in seeking to enforce orders of this kind, should have to incur legal liability to the person alleged to be in breach of the order.

It must be borne in mind that an order made under statutory authority is as much the law of the land as an Act of Parliament unless and until it has been found to be *ultra vires*. No doubt procedure by way of injunction is more flexible than procedure by prosecution and there may well be cases when a court ought to refuse an interim injunction or only to grant it on terms. But I think that it is for the person against whom the interim injunction is sought to show special reason why justice requires that the injunction should not be granted or should only be granted on terms." [38]

An undertaking is equivalent to an Injunction. [39]

38. Evidence in support of application.—In the case of every application for an Injunction it must be proved either (as is usually the case) by affidavit or otherwise [40] that sufficient grounds exist for the grant of the relief claimed. Evidence must be offered and that evidence must be sufficient to warrant the exercise of that extraordinary jurisdiction. So where no witness was examined and the only verified document on the record was the plaint, an Injunction which had been granted was dissolved. [41] The defendant's admission may be sufficient. [42] In a suit praying for an Injunction restraining the defendant from interfering with the plaintiff's possession of certain land, the plaintiff in the plaint alleged obstruction by the defendant. It was not denied by the defendant in his written statement or put in issue at the hearing : *held* that it might be presumed that the defendant did not deny the fact of obstruction. [43] It is in general necessary that a plaintiff should swear positively to his title. To obtain an Injunction, in a case in which the plaintiff's right depends upon his title, he should set out his title particularly. [44]

In applications for *ex parte* Injunctions particular care must be taken that all material facts are fully and fairly stated to the Court, and the applicant should state not only the time at which he first became aware of the threatened injury, but also the necessity which exists for dispensing with the usual notice. [45]

---

38. *F. Hoffmann-La Roche & Co. AG and Ors.* v. *Secretary of State for Trade and Industry*, (1974) 2 All ER 1128 (HL).

39. *London and Birmingham Ry.* v. *Grand Junction Canal Co.* 1 Ry. Ca., 224 (1924).

40. Civil Procedure Code, *O.* 39, *r.* 1 as to the practice relating to affidavits v. *ib.*, *O.* 19.

41. *Jagjivan Nanabhai* v. *Shridhar Balkrishna Nagarkar*, 2 B., 256 (1877). Nor will an Injunction be granted on a mere general affidavit as to the truth of the facts stated in the Bill : *Gillroy's Appeal*, 100 Pa. St., 5 (Amer.).

42. *Goluck Chunder Gooho* v. *Mohin Chunder Ghose*, 13 W. R., 95 (1870). Joyce, *Inj.*, 1288, or it may go a long way to remedy defects in the plaint. *Kunj Behari* v. *Keshav Lall*, 28 B., 567, 572 (1904).

43. *Apaji Patil* v. *Apa*, 26 B., 735 (1902).

44. Joyce, *Inj.*, 1293 ; Spelling, *op. cit.*, § 994.

45. Kerr, *Inj.*, 657 ; Joyce, *Inj.*, 1294.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

An Injunction will not be granted on a mere allegation of irreparable injury. The facts on which the allegation is founded must appear. But the omission of the bare charge of irreparable mischief would not be a defect in a plaint or affidavit otherwise good, because the Court must be satisfied from a statement of the grievance that the injury will be irreparable and it is enough if the Court can discover this from the facts alleged. The same requirements as to clearness and certainty must be observed in setting forth the facts from which the intent of the defendant to commit or to continue the commission of the wrong complained of is to be inferred. [46]

In all cases there must be proof of an intention to waste, damage or alienate or to commit some other threatened injury. [47] And the Court will refuse an Injunction where there are no sufficient data for proof of such intention or injury. [48] So a mere allegation that the defendant wishes to realize debts by bringing action in Court without proof of an intention to waste, damage or alienate the property in suit is clearly insufficient. [49] But where proof has been given of actual or threatened injury, the circumstance that there is a contradiction on the facts as alleged by the applicants and the opposite party is not in itself a bar to the grant of relief. [50] There should be no variance between the allegations in the pleadings or the aid sought thereby and the affidavits or evidence given in support of them. [51] The plaint should set forth clearly and specifically the matters relied upon to entitle a plaintiff to extraordinary relief since inferences which do not necessarily flow from the allegations will not be indulged to aid the pleader. In particular the well established rule that fraud must be charged specifically and not in general terms, is strictly enforced where an action for an Injunction is based upon alleged fraud. [52] The object of any system of pleading is that each side may be made fully aware of the questions which are

---

46. Spelling, *op. cit.*, §§ 991, 993 ; High, *Inj.*, § 1581. In *Kunj Behari* v. *Keshav Lall*, 28 B., 567, 572 (1904), Jenkins, C. J., said to an argument that there was no allegation of obstruction "Mofussil pleadings are not construed strictly and though the plaint is imperfect as a statement of the plaintiff's case, we think obstruction is involved."

47. *See, Chabildas Lallubhai* v. *The Municipal Commissioner of Bombay*, 8 Bom. H. C. R., 85 (1871) [wrong discontinued before suit ; mere *vague* apprehensions that wrong may be recommenced insufficient for Injunction]. The Court will not interfere when the injury is temporary and trifling : *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 67 (1882) ; *Ponnusawmi Tevar* v. *The Collector of Madura*, 5 Mad. H. C. R., 24 (1869) ; *G. I. P. Railway* v. *Nowroji Pestanji*, 10 B., 394 (1885) ; and will consider the likelihood of its arising or continuing : *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, supra 66, 69 ; but it was not intended by the Specific Relief Act that a man should not have an Injunction, unless his property would otherwise be practically destroyed if the Injunction were not granted ; *Yaro* v. *Sanaullah*, 19 A., 259 (1897).

48. *Secretary of State for India* v. *Ambalarana Pandara Sannadhi*, 34 M., 366 (1910).

49. *Prosunno Moyee Dossee* v. *Wooma Moyee Dossee*, 14 W. R., 409 (1870) ; and see *Roy Luchmiput Singh Bahadoor* v. *Secretary of State for India*, 11 B. L. R., App. 27—28 (1873). Such proof was held to have been given in *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 466 (1895).

50. *Moran* v. *River Steam Navigation Co.*, 14 B. L. R., 352, 357 (1875) ; but see *De Tastet* v. *Bordenave*, Jac., 516 ; *M'Curdy* v. *Noak*, 17 L. J. (N. S.), Ch., 165.

51. Kerr, *Inj.*, 657.

52. Spelling, *op. cit.*, § 982.

CENTRAL LIBRARY

about to be argued in order that each may bring forth evidence appropriate to the issues. [53]

A plaintiff must succeed not only *secundum probata* but also *secundum allegata*, but a too technical view must not be taken of the pleadings. So in a case for an Injunction in respect of a right of way where the plaint alleged that a certain space had been set apart by the owners for the residents of a lane, and used by them in common for purposes of recreation, and the relief to which the evidence showed that the plaintiff was entitled, was in effect, the same as that which he prayed for, *viz*, to have the space which the defendant had enclosed with a wall left unobstructed ; it was held that it would be taking too technical a view of the pleadings to hold, because the plaintiff alleged that the place was set apart for recreation and the evidence established that it was set apart generally for the more convenient occupation of the houses surrounding it (which would include recreation-purposes), that the plaintiff ought on that account, to fail altogether and be left to a fresh action. If the defendant had been misled or induced to refrain from calling evidence to rebut the plaintiff's case, this course might be adopted, but in the suit in question the defendant had called evidence which, in the main, coincided with that of the plaintiff. [54] The court is not justified in refusing injunction on technical grounds. [55]

Affidavits which are used in the cause or matter in which they are sworn are made by the plaintiff himself or anybody acquainted with the facts. They should be confined to such facts as the witness is able of his own knowledge to prove except on interlocutory motions in which statements as to belief are admissible, provided that reasonable grounds thereof are set forth. [56] The Court may take notice of matters given in evidence in previous proceedings in the cause and may refer to notes made by the Court on such occasions. But after the motion is opened no new evidence can be offered, except with the leave of the Court. [57]

39. Hearing of application.—If sufficient *primâ facie* evidence of a case for an Injunction is produced the Court will grant the Injunction, unless the defendant produces evidence rebutting that *primâ facie* case. But if the plaintiff's equity is falsified by the affidavits on the other side, the Court will not grant the Injunction. [58] The Court may require the plaintiff or defendant to enter into terms as a condition of granting or withholding an Injunction. [59] The Court will grant an interlocutory Injunction upon the evidence before it, and will confine itself strictly to the immediate object sought, abstaining as far as possible from prejudging the question in the cause. In dealing with an application the Court

---

53. *Sayad Muhammad* v. *Fatteh Muhammad*, 22 C., 324 (1894).

54. *Ranchordass Amthabhai* v. *Maneklal Gordhandass*, 17 B., 648, 655, 656 (1890). See Kerr, *Inj.*, 656, *et ibi casas* ; and the Indian decisions cited in Field's *Ev.*, pp. 358—369. So with regard to temporary Injunctions it has been held that the case with the grounds for relief must be made by the pleadings, and their scope cannot be enlarged by the affidavits filed. Spelling, *op cit.*, § 995.

55. *Kishanlal* & *ors.* v. *Ramrao* & *anr.* (1981) 3 SCC 20.

56. Kerr, *Inj.*, 653 : Joyce *Inj.*, 1289, *et seq* ; see *Bird* v. *Lake*, 1 H. & M., III.

57. Kerr, *Inj.*, 653.

58. Joyce, *Inj.*, 1295, 1296.

59. v. *ante*, § 37.

CENTRAL LIBRARY

will be governed by considerations as to the comparative mischief or inconvenience to the parties which may arise from granting or withholding the Injunction, and will take care so to frame its order as not to deprive either party of the benefit he is entitled to, if, in the event, it turns out that the party in whose favour the order is made shall be in the wrong. The burden lies upon the plaintiff, as the person applying for the Injunction of showing that his inconvenience exceeds that of the defendant. [60]

In some cases the motion for a temporary Injunction is treated as a trial of the action and the hearing of the cause is not further proceeded with. The Injunction may by consent be made perpetual on the motion. A compromise decree is not a decision by the Court, it has the acceptance by the Court of something to which the parties had agreed. The Court did not decide anything nor can it be said that a decision of the Court was implicit in it only a decision by the Court can be *res judicata* whether statutory section 11 of the Civil Procedure Code or constructive as a matter of public policy on which the entire doctrine rests. [61] The Supreme Court in its judgment [62] approved the observation in the Privy Council decision [63] which is as follows :—"An order by consent, not discharged by mutual agreement and remaining unreduced is as effective as an order of the Court made otherwise than by consent and not discharged on appeal. A party bound by a consent order must when once it has been completed, obey it, unless and until he can get it set aside in proceedings duly constituted for the purpose. The only difference in this respect between an order made by consent and one not so made is that the first stands unless and until it is discharged by mutual agreement or is set aside by another order of the court : the second stands unless and until it is discharged on appeal."

Further, in the said Supreme Court decision the observation made in a Bombay High Court decision [64] was approved. It has been held in the said decision that a consent decree passed by a Court of competent jurisdiction cannot be treated on the same footing as a contract between the parties. Although it is true that before a court passes a consent decree, it can and should examine the lawfulness and validity of the terms of the proposed compromise, but when once that stage is passed and a decree follows, different considerations arise and therefore, where a compromise contains a term against alienating certain property and gives the other party right to its possession on such alienation, the decree is not a nullity in spite of the fact that the term is opposed to Section 10, T. P. Act. And the fact that it is contrary to law would not affect its binding character, unless it is set aside by taking proper proceedings. That different consideration would apply when a contract is embodied in a Judge's order is also clear from *Morris* v. *Barret*, (1)(d). Barret. [65] In cases where relief, additional to that by Injunction,

---

60. Kerr, *Inj.*, 27. See also *American Cyanamid case* [1975] 1 All ER 504, *Damodar Valley Corporation* v. *Haripada Das*, AIR 1978 Cal 489.
61. *Subbarao* v. *Jaganadha Rao* AIR 1967 SC 591.
62. *C. P. Angadi* v. *Y. S. Hirannaya* 1972(1) SCC 191.
63. *Charles Hubert Kinch* v. *Edward Kick Walcot & Ors.* AIR 1929 PC 289.
64. *Govindanan* v. *Murlidhar Sriniwas & Ors.* AIR 1953 Bom 412.
65. English Law Reports, 141, p. 768.

CENTRAL LIBRARY

is sought, such a course is not generally feasible, and the trial proceeds, when upon judgment the Injunction is made permanent or dissolved. If the defendant does not offer to submit to the Injunction and pay all the costs up to that time, or if, while submitting to the Injunction, he refuses to pay costs or to give the plaintiff any of the other reliefs to which he is entitled, the plaintiff is entitled to bring the action to trial and will have his costs.[66] If upon judgment the action is dismissed, any Injunction which may have been granted goes as a matter of course,[67] though the plaintiff may bring another action for the same purpose under a different state of circumstances or upon new facts.[68] An Injunction which has been granted upon an interlocutory application is superseded by the judgment in the action. If it is intended that it should remain in force and become a perpetual Injunction, it must be expressly continued at the hearing of the cause. Injunctions are made perpetual at the trial for the purpose of protecting the plaintiff when his right has been established in the action. In order to entitle a man to an Injunction at judgement in the action, it is not absolutely necessary that he should previously have made an interlocutory application for one : and he is at liberty to claim an Injunction, although he may have previously failed to obtain one or to support it when obtained. An Injunction will be granted on judgment in the action whenever it is necessary for the purposes of complete justice, although it is not claimed in the writ of summons.[69] Injunctions are continued at the hearing either provisionally (as pending enquiries or accounts) or permanently.[70] If instead of an Injunction the plaintiff be held entitled to damages, they must be given ; the Court either itself assessing the damages, or directing an enquiry as to the damages.[71] The Court may direct an enquiry though such an enquiry may be difficult and to a great extent matter of opinion, provided that there are data upon which experienced persons may form an estimate.[72]

40. Discharge, variance, and dissolution of Injunction.—A marked feature of temporary Injunctions, as distinguished from those which are final or perpetual, is that the former are liable to be dissolved upon sufficient cause shown at any stage of the proceedings after, or perhaps even before, the coming in of the answer. Any order for an Injunction which has been obtained may be discharged or varied or set aside by the Court on application made thereto by any

---

66. *Bhaishanker Nanabhai* v. *Morarji Keshavji* (1911), 36 B., 283.

67. Joyce, *Inj.*, 1302 ; High, *Inj.*, § 1476 .See *Kalyanabhai Dipchand* v. *Ghanasham Lal Jadunathji*, 5 B., 29, 31 (1880).

68. *Mayor of Liverpool* v. *Chorley Waterwork Company*, 2 D. M. & G., 852 ; *Castelli* v. *Cook*, 7 Ha., 89, 99 ; *Att.-Gen.* v. *Sheffield Gas Company*, 3 D. M. & G., 304, 341. Spelling, *op. cit.*, § 1024, *et seq.*

69. Joyce, *Inj.*, 1314, 1318 ; Kerr, *Inj.*, 604. Under modern systems much less importance is attached to the mere form of the prayer than formerly, where the facts are properly stated and show a clear right to preventive relief. Spelling, *op cit.*, § 998. As to the terms of the orders upon applications for interlocutory Injunctions, see Joyce, *Inj.*, 1311.

70. Joyce, *Inj.*, 1316.

71. v. *ante*, § 33.

72. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 72 (1883).

CENTRAL LIBRARY

party dissatisfied with such order.[73] The application to dissolve an Injunction should be made on motion in open Court at any time before the hearing of the cause and in the cause in which it was granted[74] and before the Court by which the Injunction was granted,[75] unless the cause has been transferred, when the application may be made to that Court to which the cause has become attached.[76] A temporary Injunction may be dissolved at any time before judgment in the action upon notice to the plaintiff of motion for that purpose by the defendant as also to other parties, if any, interested with him as co-defendants.[77]

If the allegations which constitute the equity of the plaintiff's case are falsified by affidavits on the other side, or if the Court shall be of opinion that the Injunction was improperly granted it will order the Injunction to be dissolved. The Injunction will either be continued or dissolved according to the merits as disclosed by the pleadings and the preponderance of the evidence[78] A plaintiff cannot, on the motion to dissolve, sustain the Injunction on grounds not raised by the plaint, nor can he make a new case.[79]

The general rules of pleading and evidence apply both to applications for the grant and dissolution of Injunctions. The answer to the application must respond clearly and directly to each and all of the material allegations of the plaintiff's case. A mere formal or technical denial is not sufficient. In particular where fraud is alleged, the Court will not be satisfied with a general or evasive answer. The answer should deny facts not inferences. An Injunction will not be dissolved, unless the plaintiff's equity and the facts on which it is founded are explicitly denied by the positive answer.[80]

When an *ex parte* Injunction has been obtained, and a fact has not been communicated which would, if communicated, have prevented the issue of an *ex parte* Injunction, the latter will be dissolved even though a fraudulent suppression be not made out ;[81] and this will be done though an Injunction would have

---

73. Civ. Pr. Code, *O.* 39, *r.* 4 corresponding with s. 496 of Act XIV of 1882, and with s. 93, Act VIII of 1859 ; *see* generally as to the Dissolution of Injunctions, Kerr, *Inj.*, 675 : Joyce, *Inj.*, §§ 1264—1280 ; High, *Inj.*, 1467—1546 ; 1599—1618 ; Hilliard, *Inj.*, 103—171.

74. Joyce, *Inj.*, 1265 ; *Freeman* v. *McArthur*, 2 Tay. & Bell, R., 25 (1851) ; *Sreemutty Sohochurry Dossee* v. *Hurree Kisto Roy*, 2 Boulnois, 62 (1839) ; Kerr, *Inj.*, 675.

75. *Paredes* v. *Lizardi*, 9 Beav., 490 ; and see *Hammond* v. *Smith*, 15 L. J. Ch., 40 ; Joyce, *Inj.*, 1277.

76. *Sturgeon* v. *Hooker*, 1 DeG. & S., 484.

77. Kerr, *Inj.*, 675 ; *Service* v. *Castaneda*, 9 Jur., 367.

78. Kerr, *Inj.*, 675 ; Spelling, *op. cit.*, § 1013, *Sanxter* v. *Foster* Cr. & Ph., 302 ; *Jagjivan* v. *Shridhar*, 2 B., 252 ; 255—257 (1877) ; *Freeman* v. *McArthur* 2 Tay. & Bell, R., 25 (1851) ; *Sreemutty Sohochurry Dossee* v. *Hurree Kisto Roy*, 2 Boulnois, 62 (1859).

79. *Burdott* v. *Hay*, 4 D. J. & S., 41 ; *Barker* v. *North Staffordshire Railway Co.*, 5 Ra. Ca., 401, cited in Kerr, *Inj.*, 675.

80. Spelling, *op. cit.*, §§ 1000—1005 ; and as to the dissolution of Injunctions generally, *ib.*, at pp. 838—873 ; High, *Inj.*, 1505. As to the evidence necessary on the motion to dissolve, *see* Joyce, *Inj.*, 1278.

81. *Freeman* v. *McArthur*, 2 Tay, & Bell, R., 10 (1851) ; [this is according to the English practice.] See *Hilton* v. *Lord Granville*, 4 Beav., 130 and cases cited in Kerr, *Inj.*, 676.

CENTRAL LIBRARY

issued, if made on notice, even upon a communication of the fact suppressed.[82] And when an Injunction is obtained *ex parte* on facts of which a material one is false, the Injunction will be dissolved, although by the affidavits filed when the motion for dissolution is made, there appear sufficient grounds for granting it.[83] The plaintiff will not be heard to say that he was not aware of the importance of the facts so mis-stated or concealed,[84] or that he had forgotten them.[85] But the mis-statement or suppression must be such as to lead the Court to grant the Injunction.[86]

A party who has obtained an *ex parte* Injunction which is afterwards dissolved on the ground of concealment of material facts is not precluded from making an application for another Injunction on the merits.[87] And the Court when dissolving an Injunction on these grounds will prejudice any question which may be agitated on another motion or notice.[88] So also if an Injunction made on notice be set aside as having been issued on insufficient grounds, the plaintiff is at liberty to apply again, if he be in a position to make out a *primâ facie* case.[89] The Court does not deal with the same severity and strictness in the case of an Injunction obtained on motion, as with an Injunction obtained *ex parte*; but the circumstances of the case may be such as to call upon the Court to visit the plaintiff with the same severity.[90]

An appeal lies, under Order 43 Rule (1)(r) of the Code of Civil Procedure from an order discharging, varying or setting aside an Injunction or an order *refusing* to discharge, vary or set aside an Injunction : the right of appeal given by that Order not being limited to an affirmative, but including also a negative order.[91] Acquiescence in an order for an Injunction and delay may disentitle to a right to dissolve.[92]

Upon a motion being made to dissolve an Injunction, the Court will either absolutely dissolve it or continue it to the hearing, according to the merits of the case as shown by the pleadings and evidence. But each of the parties restrained must move to dissolve and the Injunction will not be dissolved as to those not moving.[93] An interlocutory Injunction in a suit for perpetual Injunction is dissolved *ipso facto* by a decree granting a perpetual Injunction.[94] When a main

---

82. *Freeman* v. *McArthur*, at p. 28.

83. *Sreemutty Sohochurry Dossee* v. *Hurree Kisto Roy*, 2 Boulnois, 62 (1859), and see Kerr, *Inj.*, 676: *Prof. A. K. Sanyal* v. *Dr. Chittaranjan Basistha*, AIR 1982 Cal 412 ; *Rex* v. *Income Tax Commissioner*, (1917) 1 K B 486.

84. *Dalglish* v. *Jarvice*, 2 Mac. & G., 241.

85. *Clifton* v. *Robinson*, 16 Beav., 355.

86. Kerr, *Inj.*, 676.

87. *Fitch* v. *Rochfort*, 18 L.J., Ch., 458.

88. *Freeman* v. *McArthur*, 2 Tay. & Bell, R., 26.

89. *Jagjivan* v. *Shridhar*, 2, B., 255, 256 (1877) ; Spelling, *op. cit.*, § 1047.

90. Kerr, *Inj.*, 679 ; *Maclaren* v. *Stainton*, 16 Beav., 290.

91. *Zabada Jan* v. *Muhammad Taiab*, 15 A., 8 (1892).

92. *Joyce, Inj.*, 1269—1270 ; High, *Inj.*, § 1480 : so also want of diligence on the part of the complainant in prosecuting his cause may afford ground for dissolution ; *ib.*, § 1490.

93. Joyce, *Inj.*, 1270, 1274, 1278.

94. *Mohini Mohan* v. *Surendra Narayan*, 42 C., 550 (1914) ; 21 C. L. J., 68.

CENTRAL LIBRARY

suit is disposed of, no interim order granted therein shall continue to operate.[95] Similarly, when a suit is dismissed for default, after restoration of the suit the order of temporary injunction granted previously does not automatically revive.[96] All interim orders come to an end on dismissal of a suit.[97]

41. Appeal in the matter of Injunctions,—An order granting a temporary Injunction under Order 39, rules 1 and 2 of the Civil Procedure Code as amended by Act 104 of 1976 may be appealed from, as also may an order under Order 39, rule 4 as amended by Act 104 of 1976 relating to the discharge, variance or setting aside of such an Injunction already issued.[98] In the latter case there is an appeal both from an order discharging, varying or setting aside an Injunction and an order refusing to discharge, vary or set aside an Injunction : the appeal given by the Code not being limited to an affirmative but including also a negative order.[99] An appeal lies from an order refusing as well as from one granting a temporary Injunction.[1] No appeal lies from the order of a judge refusing to grant an Injunction without notice to the defendant.[2] An appeal also lies from an order under section 95 of the Code relating to the grant of compensation to the defendant for the issue of an Injunction upon insufficient grounds.[3] Where a permanent Injunction has been granted by the judgment, the right of appeal is governed by the Charters of the High Courts,[4] the provisions of the various Civil Courts Acts,[5] and the ordinary rules contained in the Civil Procedure Code relating to appeals from original decrees,[6] and from appellate decrees.[7] By section 43, cl. 4 of the Guardians and Wards Act, 1890, in case of disobedience to an order passed under sub-sections 1 and 2 of that section, in relation to the conduct for proceedings of guardians, the order may be enforced in the same manner as an Injunction granted under Order 39,, rule 1 or rule 2 of the Code of Civil Procedure. On a petition being presented to a District Court

---

95. *Shivaraya* v. *Sharnappa*, AIR 1968 Mys 283.

96. *Nagar Mahapalika* v. *Ved Prakash*, AIR 1976 All 264.

97. *Gopi Nath* v. *Amir Chand*, 1970 ALJ 107.

98. Civ. Pr. Code, *O.* 43 as amended by Act 104 of 1976. See, *Mayarani* v. *Bhupal*, AIR 1981 Cal 264 ; *Saraju* v. *Ganga*, AIR 1951 Cal 446.

99. *Zabada Jan* v. *Muhammad Taiab*, 15 A., 8 (1892).

1. *Lachmi Narain* v. *Ram Charan*, 35 A., 425 (1913). *Harilal* v. *Prayag Ram*, 17 C. W. N., 996 (1913) ; 18 C. L. J., 39. See, *Vasant Diwakar* v. *Union of India*, 1983 Jab L.J. 489 ; *Balmukand* v. *State of MP*, AIR 1982 MP 38.

2. *Luis* v. *Luis*, 12 M., 186 (1888). See, *Midche* v. *Chennamma*, (1973) 2 Mys LJ 134 (No appeal lies for an order of status quo) ; *Khusilal* v. *Gorelal*, AIR 1986 MP 47.

3. Civ. Pr. Code, *O.* 43 as amended by Act 104 of 1976 ; *see* as to such orders, *ante*, § 28.

4. Letters Patent, 1865, cls. 15 and 16 (Calcutta). The provisions of the Letters Patent for the Madras and Bombay High Courts are *mutatis mutandis* the same as those for the Calcutta High Court. See, *M. Ramnarain P. Ltd* v *State Trading Corpn. of India Ltd.*, AIR 1983 SC 786.

5. Act XII of 1887 (Bengal), ss. 20, 21 ; Act III of 1873 (Madras), s. 13 ; Act XIV of 1869 (Bombay), ss. 8, 16, 17, 26.

6. Civ. Pr. Code, *O.* 41 as amended by Act 104 of 1976.

7. *Ib.*, *O.* 42 as amended by Act 104 of 1976.

CENTRAL LIBRARY

asking that the guardians of certain minors, who had been appointed by the Court under the Guardians and Wards Act might be removed, the Judge passed an order in which he purported to issue an Injunction under section 492 (now represented by Order 39, rule 1) of the last Code of Civil Procedure for the attachment of the estate of the minors and to appoint a receiver to manage the estate. On an appeal being preferred against the said orders it was contended that the Judge must be taken to have acted under the Guardians and Wards Act, 1890, and that inasmuch as no appeal was provided by that Act in respect of such an order, no appeal lay :

Held, that though both orders were passed without jurisdiction, the Judge purporting to have acted under section 492 (now represented by Order 39, r. 1) of the last Code of Civil Procedure as regards the issue of an Injunction, and under section 503 (now represented by Order 40, r. 1) as regards the appointment of a receiver, inasmuch as orders under either of these sections were appealable, the fact that the Judge had no power in this case to pass orders under them did not bar the High Court from treating the orders as having been passed thereunder for the purpose of entertaining an appeal against the orders since there was no provision of law under which the Judge could pass orders attaching property or appointing a receiver without such orders being subject to appeal.[8] An order for an Injunction is discretionary and a party appealing against it should prove that the original Court acted wrongly in the exercise of its jurisdiction.[9] An appellate Court in appeal from an order refusing temporary injunction but in granting interim injunction need not give an elaborate order.[10]

42. Reference, Revision and Review in the same matter.—A Court may before or on the hearing of a suit or appeal in which the decree is final either of its own motion or on the application of any of the parties refer any question of law to the High Court for its decision.[11] And the High Court may, for the purposes of revision, call for the record of cases which are not appealable to it.[12] Further, any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred ; or by a decree or order from which no appeal is allowed ; or by a judgment on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, or the Court, if any, to which the business of the former Court has been transferred. This power of review of judgment is exerciseable either by Courts of first instance or Courts of Appeal upon the grounds and terms mentioned in the Civil Procedure Code[13] and is distinct from an appeal, the former being a reconsideration of the same

---

8. *Abdul Rahiman Saheb* v. *Ganapathi Bhatta*, 23 M., 517 (1900).

9. *Umesh Chandra* v. *Nibaran Chandra* 19 C. L. J., 305 (1913) ; *District Judge* v. *Basori Lal*, AIR 1940 Nag. 203.

10. *Sakti Ranjan Chatterjee* v. *Hindusthan Steel Ltd.*, 73 CWN 228.

11. Civ. Pr. Code, ss. 113—115.

12. Civil Procedure Code, s. 115 as amended by Act 104 of 1976. For examples of the exercise of such power of revision in the matter of Injunctions, see *Luis* v. *Luis*, 12 M., 186 (1888) ; *Gossain Money Puree* v. *Gour Pershad Singh*, 11 C., 146 (1884).

13. Civ. Pr. Code, *O.* 47 as amended by Act 104 of 1976. For an example of review of judgment refusing an Injunction, see *Dhuronidhar Sen* v. *Agra Bank*, 5 C., 86 (1879).

CENTRAL LIBRARY

subject by the same Judge, the latter being a hearing before another tribunal. The scope of revisional jurisdiction of the High Court is laid down in *Sher Singh* v. *Jt. Director of Consolidation.* [14] The High Court should confine itself in exercise of revisional jurisdiction to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the sub-ordinate courts. No revision lies where an appeal is maintainable. [15]

43. Costs, Court-fee.—When disposing of any application for an Injunction the Court may give to either party the costs of the application or may reserve the question of costs. Costs of an application ordered to stand over till trial, and costs reserved to be disposed of at the trial follow the event of the trial without any special direction. If the costs are not reserved upon an interlocutory application and in all cases when judgment is finally delivered in the action, the judgment will direct by whom the costs are to be paid. The Court has full power to give and apportion costs of every application and suit in any manner it thinks fit. But the general rule is that costs of an application or suit follow the event, and if the Court directs otherwise it must state its reasons in writing. [16] So where a party is entitled to appeal and has obtained a decree he will be awarded the cost of the appeal even though it be a hard case. [17] If both parties are in the wrong, no costs will be given to either side. [18] A suit for an Injunction and including no claim for damages is not a suit to recover a debt or damages within Order 24 of the Civil Procedure Code dealing with payment into Court. In such a case a Judge has full power under section 35 of the Code to apportion the costs : but the principle underlying Order 24, rule 4 of the Code ought to regulate the discretion of the Court in directing the payment of costs. [19]

A suit of the nature referred to in Order 21, rule 58(5) of the Code of Civil Procedure as amended by Act 104 of 1976 instituted for the declaration of the plaintiff's right to and possession of a property attached, and for a perpetual Injunction to restrain its sale in execution of a decree, is one, in which consequential relief is prayed for and therefore subject to an *ad valorem* court-fee duty. [20]

In cases falling under s. 7(IV) of the Court-Fees Act, although the plaintiff is to state the amount at which he values the relief sought, the legislature never intended that the plaintiff should be at liberty to assign any arbitrary value and thus be free to choose capriciously the *forum* of trial on appeal. [21]

---

14. AIR 1978 SC 1341. See *State of Orissa* v. *Puri Municipality*,, AIR 1984 Orissa 132.

15. *Reserve Bank of India Employees' Association* v. *R.B.I.*, AIR 1981 AP 246.

16. *See* Kerr *Inj.*, 38 where the rules laid down by Sir John Leach in 1 Sim. & St. 357 are given as also the several exceptions to these rules.

17. *Callianji Harjivan* v. *Narsi Tricum*, 19 B., 764, 770 (1895).

18. *Hilliard* v. *Hanson*, 21 Ch. D., 69 ; *Aylwin* v. *Evans*, 47 L. T. N. S., 568.

19. *Luxumon Nana Patil* v. *Moroba Ramkrishna*, 21 B., 502 (1896), dealing with corresponding sections of the last Code.

20. *Fulkumari* v. *Ghanshyam Misra*, 31 C., 511 (1903). See, *Sitaram* v. *M. G. Deo*, AIR 1974 MP. 173 ; *Shivlal* v. *Trimbak*, AIR 1976 Bom 226 ; Sch. II, Art. 15 of the West Bengal Court Fees Act, 1970.

21. *Raj Krishna Dey* v. *Bepin Behary Dey*, 40 C., 245 (1912). See, Sarkar's *Specific Relief Act* (13th ed.), p. 434.

CENTRAL LIBRARY

44. Enforcement of orders and decrees granting Injunctions.—An order granting a temporary Injunction may be enforced by imprisonment of the defendant for a term not exceeding six months, or the attachment of his property or both.[22] The High Courts in India have further all the powers of a Court of Equity in England for enforcing their orders and decrees *in personam*. The remedy for the enforcement of decrees granting permanent Injunctions lies in execution of the decrees and the procedure laid down by the Code relating to the execution of decrees is to be observed. Order 21, rule 32, C. P. C. prescribes the procedure for execution of a decree for injunction. The Court has also power to enforce its order of injunction with the help of the police.[23] The practice to be followed in the case of breach of an Injunction has been dealt with in 27.[24]

45. Limitation.—Suits for Injunctions, except suits to restrain waste which must be instituted within three years of the date when the waste begins,[25] have not been specially provided for by the Limitation Act. A suit for a perpetual Injunction under section 38 of the Specific Relief Act falls under Article 120 (now under Act 113 of the Act of 1963) of that Act,[26] which provides that a suit for which no period of limitation is provided elsewhere in the schedule must be instituted within six years of the date when the right to sue accrues.[27] The doctrine of laches is however applicable to suits for Injunctions, and the Court will, in the exercise of the discretion which it has, decline, in the absence of special circumstances to make a decree even if a much lesser time than six years had elapsed. Where a decree awards a perpetual Injunction, application for execution of the decree must be made within three years from the time when there is a breach of the Injunction.[28] But failure to enforce prior breaches of a perpetual Injunction will not bar the enforcement within three years of a new breach.[29] A suit for compensation for injury caused by an Injunction wrongfully obtained must be instituted within three years of the time when the Injunction ceases.[30] An application to revive a previous application for execution which had been temporarily suspended by an Injunction or by reason of an order under section 280 of the last Code (which was represented by Or. 21, r. 60 but was

---

22. Civ. Pr. Code, *O.* 39 as amended by Act 104 of 1976.

23. *Satyanarayan Tiwari* v. *Shops Santhoshnagar*, AIR 1982 AP 394, *R. Andemana* v. *P. Narasimhan* AIR 1971 AP 53.

24. v. *ante*, High, *Inj.*, §§ 1416—1449; Hilliard, *Inj.*, 172—186.

25. (Now Act XXXVI of 1963).

26. *Kanakasubai* v. *Muttu*, 13 M., 445 (1890). See, *Mohd. Yunus* v. *Syedunnissa*, AIR 1961 SC 808.

27. See *Ranga Pai* v. *Baba*, 20 M., 398 (1896), where it was held that the suit for an injunction was not barred.

28. *Sadagopa* v. *Krishnamachari*, 12 M. 364 (1889).

29. *Venkata Chellam* v. *Veerappa* (1905), 29 M., 314 ; *Bhagwan Das* v. *Sakhdei* (1905), 28 A., 300 ; 3 A. L. J., 836.

30. *See*, Art. 90 of the Limitation Act, 1963. When the attachment of movable property released under *O.* 21, *r.* 58(3)(a) of the Civ. Pr. Code is maintained by an Injunction issued in a suit under *O.* 21, *r.* 58(5), and such suit is ultimately dismissed, a suit to recover damages for injury to the property, while under attachment, is governed by this article.

CENTRAL LIBRARY

omitted subsequently by Act 104 of 1976) or other obstacle is according to the Calcutta, Bombay and Allahabad High Courts governed by the Limitation Act. But where a sale had been stayed by an Injunction against sale of one-fourth of the property and after removal of the Injunction limitation was alleged, it was held that there was no limitation for the Injunction had been an unwarranted device to delay the sale. [31] The period of limitation is to be computed from the date on which the Injunction or other obstacle is removed. [32] In computing the period of limitation prescribed for any suit, the institution of which has been stayed by Injunction or order, the time of the continuance of the Injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded. [33]

---

31. *Garudeo Narayan Sinha* v. *Amrit Narayan Sinha*, (1906)33 C., 689 ; and see *Basanta Lal* v. *Batul Bibi* (1883)6 A., 23 ; and *Laxmi Chand* v. *Ballam Das* (1895)17 A., 425 ; distinguishing *Raghunandun Pershad* v. *Bhugo Lal* (1889)17 A., 425.

32. *See, Narayana* v. *Pappi*, 10 M., 22 (1886).

33. Act XV of 1877, s. 15 (now s. 15(1) Act XXXVI of 1963).

CENTRAL LIBRARY

CHAPTER IV

INJUNCTIONS IN RESPECT OF JUDICIAL PROCEEDINGS

Synopsis

46. Control and stay of proceedings.
47. Injunction in restraint of proceeding :
(i) in England ;
(ii) in India prior to the Specific Relief Act
48. Present law :
(i) Contemplated proceedings may be stayed
(ii) but not pending proceedings unless there is danger of
(iii) multiplicity of proceedings
(iv) and the proceedings stayed are those of a subordinate Court.
49. Wrongful sale in execution of decree.

46. Control and stay of proceedings.—Where there is a single judicial proceeding the Court has power to transfer the proceeding from one Court to another ; [1] to stay proceedings, [2] or execution of a decree passed therein. [3]

Where there is more than one judicial proceeding one such proceeding may be affected by another in several ways. Thus no Court can try any suit or issue in which the matter in dispute has been in issue in a former suit and has been therein heard and decided ; [4] nor any suit in which the matter in dispute is also in issue in a previously instituted pending suit. [5] Superior Courts may enforce the performance of public duties by inferior Courts ; [6] and a superior Court may further restrain by Injunction a judicial proceeding of a civil nature pending in a subordinate Court where such restraint is necessary to prevent multiplicity of proceedings. [7]

47. Injunction in restraint of proceeding.—Of the various forms of procedure touching the control, stay or continuance of proceedings, it is only with the last that the present chapter is concerned.

(i) In England.—Prior to the Judicature Act of 1873, there were two classes of Courts, namely, Courts of Common Law and Courts of Equity, as there were two sets of rights, namely, legal rights and equitable rights. It might and frequently so happen that a plaintiff possessed an undoubted legal right in a Court of Common law and that the defendant had no defence in such Court though

---

1. Civ. Pr. Code, ss. 21—24 as amended by Act 104 of 1976. As to transfer in criminal cases, see Cr. Pr. Code, ss. 191, 192, 403—412 of Act 2 of 1974.
2. *See* Cr. Pr. Code, s. 322 of Act 2 of 1974.
3. Civ. Pr. Code, *O.* 21, *r.* 29 ; *O.* 41, *r.* 5 as amended by Act 104 of 1976.
4. Civ. Pr. Code, ss. 11—13 as amended by Act 104 of 1976 also Cr. Pr. Code, s. 300 of Act 2 of 1974.
5. Civ. Pr. Code, s. 11 as amended by Act 104 of 1976.
6. *See* Shortt on *Extra Legal Remedies* (1888), p. 340, *et seq.* ; Spelling's *Extraordinary Relief*, § 136.
7. Act 47 of 1963, s. 41(a), (b), (c). See, *Dhanpati Bag & ors.* v. *Narain Das & ors.*, 75 C.W.N. 590. See also, *Municipal Board* v. *Mir Singh*, A.I.R. 1965 All. 527.

CENTRAL LIBRARY

entitled to relief in a Court of Equity. In such a case an Injunction granted by the Court of Chancery to restrain judicial proceedings in a Court of law, whether before or after judgment, provided a remedy by means of which the plaintiff was prevented from taking an undue advantage of the defendant and enabled the latter to obtain the decision of a Court of Equity upon the question of his claim to equitable relief, against the legal demand of the plaintiff.[8] The principle upon which this jurisdiction was exercised was that wherever a party by fraud, accident or otherwise has an advantage in proceeding in a Court of ordinary jurisdiction which must necessarily make that Court an instrument of injustice, and it is therefore against conscience that he should use the advantage; in such cases to prevent a manifest wrong, Courts of Equity interpose, by restraining the party whose conscience is thus bound from using the advantage he has improperly gained.[9] The Injunctions thus issued by the Court of Chancery for controlling proceedings in other suits were not orders issued to such other *Courts* but to the *party*, such party being amenable to the jurisdiction of the Court granting the Injunction and capable of being acted on by the process of contempt of Court and were in fact orders *in personam*.[10] The Injunction neither assumed any superiority over the Court in which the party is proceeding, nor denied its jurisdiction, but was granted on the sole ground, that from certain equitable circumstances, of which the Court issuing the Injunction has cognisance, it was against conscience for the party to proceed in the cause.[11] Injunctions to stay proceedings at law were sometimes granted to stay trial; or after verdict to stay judgment or after judgment to stay execution. The common mode in which relief was granted was after judgment, by enjoining the plaintiff not to sue out execution upon the judgment.[12]

In consequence of the above-mentioned duality in the legal system the cases in which equity interfered by Injunction were usually classed under two heads as being either (*a*) cases of Injunction to prevent the inequitable institution or continuance of judicial proceedings; or (*b*) cases of Injunction to restrain wrongful acts unconnected with judicial proceedings.

By the Judicature Act,[13] 1873, the doctrines of the Chancellors were finally and completely adopted into the law of England and the remedy by Injunction, which was therefore almost entirely peculiar to the Court of Chancery, was

---

8. See, Halsbury's *Laws of England* (4th ed.) Vol. 24, para 910, Vol. 16, para 1271; see also Eden, *Inj.*, Ch. II; Drewry, *Inj.*, Part I; High, *Inj.*, 45—277; Hilliard, *Inj.*, 187—311. *Dhuronidhur Sen* v. *Agra Bank*, 4 C., 380, 396 (1878). [Injunctions were granted "upon the assumption that the rights of the parties could not be fully enquired into, except in the Court of Chancery itself. But it is significant that as soon as all the courts of Westminster Hall came to the Courts of co-ordinate jurisdiction under the new Judicature Acts this proceeding by way of Injunction was abolished," *per* Markby, J.] See *Mohant Ramkeshwor Das* v. *Baldeo Singh*, A.I.R. 1938 P. 606.

9. Joyce's *Doctrines*, 9; *Dhuronidhur Sen* v. *Agra Bank*, 5 C., 86, 96 (1879); 4 C. L. R., 434; *Kunhamed* v. *Kutti*, 14 M., 167, 168 (1891); *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352, 359 (1875); Hilliard, *Inj.*, 187—311.

10. Joyce's *Doctrines*, 9. *In re Artistic Colour Printing Co.*, 14 Ch. D., 502.

11. Joyce's *Doctrines*, 9; Snell's *Equity*, (28th ed.), pp. 625—626.

12. Hilliard, *Inj.*, 189.

13. Ss. 16, 21, 23, 24, 25 by ss. 24, 25, it is enacted that law and equity shall be administered concurrently, and that wherever there is a conflict the rules of equity shall prevail.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

rendered equally exercisable by Courts of law, as it had been by those of equity. By that Act there has been a fusion of law and equity into one system which is administered by all Courts without distinction, though for the sake of convenience certain classes of cases are allotted to each of the divisions of the High Courts. The former jurisdiction of the Court of Chancery to restrain by Injunction an action at law in all cases where the defendant to the action could show that he had a good equitable defence, has been abolished by the Judicature Act, which however provides that every matter of equity, in which an Injunction against the prosecution of a proceeding might have been obtained, if that Act had not been passed, may be relied on by way of defence to the action.[14] In consequence of these provisions, Injunctions properly so called, now fall for the most part under one head only, that is to say, the second of the two heads abovementioned. At the present day instead of the Injunction, a stay of proceedings or other like remedial order would be made in the action.[15] There are, however, still certain continuing powers of the Court to grant Injunctions in respect of legal proceedings. Thus an action not pending but only contemplated or a pending action in a foreign Court, may still, the case being otherwise proper, be restrained by Injunctions.[16]

(ii) In India prior to the Specific Relief Act.—The then Supreme Courts at Calcutta, Bombay and Madras followed the law and practice of the Court of Chancery. They possessed as well an equity as a common law side, though (in this differing from the English Courts) the same Judges administered both common law remedies and equitable reliefs.[17] In the mofussil the distinction between law and equity never prevailed. The establishment of the Presidency High Courts in 1862 assimilated the judicial system in this country in nearly every material respect to that which has prevailed in England since the Judicature Act. In India the Courts are both Courts of Equity and Courts of Common Law in one.[18] It follows from the dissimilarity of the circumstances of this country from those which existed in England prior to the Judicature Act that the English case-law anterior to that period is not here of much assistance.

The reported cases show that prior to the Specific Relief Act the High Courts restrained by Injunction proceedings both instituted and pending in the mofussil against the Court Receiver to recover possession of part of certain lands

---

14. Kerr, *Inj.*, 3 *et seq.*

15. Snell's *Principles of Equity*, 28th ed pp. 661—662.

16. Kerr, *Inj.*, 3 *et seq.* *Armstrong* v. *Armstrong*, 1892, p. 98 ; as to stay of pending proceedings in a foreign Court, see Act 47 of 1963, s. 41 (*b*) ; Madras L. J., Parts v and vi, p. 164, vol. v, May & June, 1895. *Tikamchand* v. *Santok Chand*, 24 C. W. N., 735 (1920) ; 53 CWN 398. As to powers of Courts of Bankruptcy, *see* ex parte *Ditton*, In re *Woods*, 1 Ch. D., 557 ; Ex parte *Reynolds*, In re *Barnett*, 15 Q. B. D., 169.

17. Clarke's *Rules and Orders*, 1829 ; Preface, p. x ; Cowell's *Tagore Law Lectures*, 1872, p. 53 ; see the Charters, 13 Car. II, 35 Car. II, 9th Aug. 1683 ; 13 Geo. I ; *Borrodaile* v. *Chainsook Buxiram*, 1 Hyde, 60, 61 ; 13 Geo. III, c. 63, s. 18, 26th March, 1774 ; Charter establishing Supreme Court at Fort William, Bengal, 39, and 40 Geo. III, c. 79, s. 2, 26th Dec. 1801 (*ib.* Madras) ; 4 Geo. IV, c. 71, s. 7, 1823 (*ib.* Bombay). See § 2, *ante*.

18. See Objects and Reasons to Specific Relief Bill relating to the old Act (1 of 1877). "It is hardly necessary to observe that in a country where law and equity are administered by the same Courts the subject of staying legal proceedings need not be dealt with at much length."

CENTRAL LIBRARY

which were in the hands of the receiver [18]a ; as also proceedings not instituted but threatened, [19] and prohibited the execution of a decree which had already been obtained. [20] and any decree that might be obtained in a contemplated suit, until a certain date fixed by the order of the Court. [21] In the last cited case the proceedings were threatened to be taken in a Court subordinate to that from which the Injunction issued. [22] In a subsequent case [23] the proceeding sought to be restrained was both instituted and pending and the decree in respect of which the Injunction was sought was that of a Court exercising co-ordinate jurisdiction with the Court in which the Injunction was applied for. In the first instance the Injunction was refused, [24] but subsequently upon review of judgment the Injunction was issued upon grounds which it is not easy to understand in so far as the distinction made by the Court of Review [25] between an Injunction issued to or affecting the Court itself and an Injunction issued against the party himself is one common to all Injunctions in restraint of judicial proceedings. The *ratio decidendi,* however, appears to have been that the order complained of was a mere nullity inasmuch as the plaintiff Bank was no party to the original suit in which the decree sought to be executed was made and was not the legal representative of such party. The order was in effect an order that a decree should be executed against a person, who was not in fact a party to the suit. The property, therefore, sought to be attached in execution was the property of the plaintiff Bank and the defendant was wrongfully attempting to sell that property before any adjudication had been made of his right so to do and he was so acting in a suit brought against a third person to which suit the Bank was in point of law no party. [26] It is to be noted moreover with regard to wrongful sales in execution of a decree that section 92 of the Civil Procedure Code (Act VIII of 1859) corresponding with section 492 of the last Code (now represented by Order 39, rule 1 of the present Code as amended by Act 104 of 1976 contained no provision with reference thereto. [27]

It was also held that the purchaser of a share of a decree who has failed in the endeavour to get the Court executing it to put him upon the record for the

---

18a. *Beer Chunder Jhoograj Gohasnee* v. *Hogg,* Cor. 56 (1864). The Injunction in this case went not only against the defendant but also enjoined the Principal Sudder Ameen in whose Court the suit was instituted from proceeding in the matter, until the further orders of the High Court. In *Dhurunidhur Sen* v. *Agra Bank,* 4 C., 380 (1878) ; s. c. in review, 5 C., 86 (1879) ; the execution sought to be restrained was also pending.

19. *Moran* v. *River Steam Navigation Company,* 14 B. L. R., 352, 361 (1875) [judgment of the court of first instance].

20. *Anantnath Dey* v. *Mackintosh,* 6 B. L. R., 571 (1871). The execution restrained in this case does not appear to have been pending.

21. *Moran* v. *River Steam Navigation Company,* supra, at p. 366 [judgment in appeal].

22. See *Dhurunidhur Sen* v. *Agra Bank,* 4 C., p. 397 (1878).

23. *Dhurunidhur Sen* v. *Agra Bank,* 4 C., 380 (1878), s. c. in review, 5 C., 86 (1879).

24. *Id.,* 4 C., 380.

25. *Id.,* 5 C., 96 ; see *Venkatesa Tawker* v. *Ramasami Chettiar,* 18 M., 341 (1895).

26. As to the order being a nullity all Courts were agreed, see 4 C., 383, *per* White, J. ; *ib.,* 395, *per* Markby, J., *ib.,* 391, *per* Ainslie, J., 5 C., 95, 97, *per* Garth, C. J. For a somewhat analogous case, see *Krishnaji* v. *Vithalrav,* 12 B., 80 (1887).

27. v. *post.*

CENTRAL LIBRARY

purpose of obtaining the benefit of the decree, has no right to an Injunction to prevent the decree-holder from executing the whole decree without regard to the sale even if the purchase is made on behalf of the judgment-debtor ; he could only get a right to an Injunction of the kind, if the sale amounted to a release from the decree-holder to the judgment-debtor from his liability under the decree.[28]

48. Present law.—The Specific Relief Act passed in 1963[29] and Order 39, rules 1 and 2 of the present Code of Civil Procedure as amended by Act 104 of 1976 contain the law now in force upon this subject. Section 41 of that Act applies no doubt in terms only to perpetual Injunction, temporary Injunctions being left by section 37 to be regulated by the Code of Civil Procedure.[30] Section 41 therefore does not affect temporary Injunctions against wrongful sale in execution of a decree applied for under Order 39, rule 1 of the Civil Procedure Code.[31] In a general manner, however, the same principles must equally apply to the granting of a temporary as to a perpetual Injunction and these principles must therefore be sought in the Specific Relief Act itself.[32] By the English Judicature Act an Injunction may be granted by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made ; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just.

Apart from the terms of the Civil Procedure Code the High Court has an inherent power to grant Injunctions under the general equity jurisdiction inherited by it from the Supreme Court and can therefore restrain by Injunction a defendant in a suit filed in the High Court from proceeding with a suit in the Presidency Small Cause Court in the same matters.[33] But it has been held that in accordance with the English rule there is no such jurisdiction unless the party is within the limits of the High Court jurisdiction so that he would be subject to process for contempt of Court[34] and that it is not sufficient that he has property within such jurisdiction.[35]

As the subject-matter of complaint may be either a breach of contract or civil wrong, or an act which is criminal, so judicial proceedings may be either civil or criminal. An Injunction cannot be granted to stay proceedings in a criminal matter.[36] But if an act which is criminal touches also the enjoyment of property, the Court has jurisdiction, but its interference is founded solely on

---

28. *Mussamut Rohimunnissa* v. *Nawab Leakut Ali Khan*, 22 W. R., 506 (1874).
29. Act 47 of 1963, s. 41, cls. (*a*), (*b*) and (*e*).
30. *Amir Dulhin* v. *Administrator-General of Bengal*, 23 C., 351 (1895).
31. *Amir Dulhin* v. *Administrator-General of Bengal*, 23 C., 351 (1895).
32. v. *ante*, p. 6.
33. *Rash Behary Dey* v. *Bhowani Churn Bose* (1906), 34 C., 97 ; *Uderam Kessaji* v. *Hyderally Abdul Khayum* (1908), 33 B., 469 ; *Hart* v. *Grooser* (1905), 9 C. W. N., 748 ; *Punchanan Singh* v. *Kumuklota Barmoni* (1905), 3 C. L. J., 29 ; *Hukum Chand Boido* v. *Kamalanand Singh* (1905), 33 C., 297 ; *Sengaravelu Mudale* v. *Balasubrahmania Mudale*, 1926, M. W. N., 708 (1926), *Bharat Starch & Chemical Ltd* v. *Mill Stores Ltd*, 1945 (2) Cal 298.
34. *Vulcan Iron Works* v. *Bishumbhur Prosad* (1908), 36 C., 233 ; following *Carron Iron Co.* v. *Maclarne* (1885), 5 H. L. C., 416.
35. *Jumna Dass* v. *Harcharan Dass*, (1900), 28 C., 405 ; *Ganoda Sundary Chaudhurani* v. *Nalini Ranjan Raha*, (1908), 36 C., 28.
36. Act 47 of 1963, s. 41(d).

CENTRAL LIBRARY

the ground of injury to property.[37] Even if the Court has jurisdiction to restrain criminal proceedings for the recovery of a penalty, the Court will not interfere in the absence of special circumstances. It is not the practice of the Court to interfere with corporate bodies unless their powers are manifestly abused. A Court may, however, interfere to restrain proceedings criminal or *quasi*-criminal in form which tend to the impairment of property rights and proceedings for the enforcement of municipal ordinances.[38] With regard to civil "judicial proceedings" a term which includes both an action and proceedings taken in execution[39] of a decree obtained therein, the rule is that a judicial proceeding not pending but contemplated and threatened only may be restrained as also a pending proceeding; provided that such proceeding is pending in a Court subordinate to that from which the Injunction is sought and such restraint is necessary to prevent multiplicity of proceedings.[40] In other cases no Injunction will issue.

Injunctions of this class which will be granted may thus be divided into (*a*) Injunctions in restraint of suits or applications for execution which are not instituted and pending, but are contemplated and threatened only.[41] And Injunctions in restraint of such application for execution may be (*i*) Injunctions restraining the execution of any decree which might be obtained in a contemplated action;[42] (*ii*) restraining the execution of a decree which has already been obtained, but in respect of which at the date of the issue of the Injunction no application for execution has yet been made;[43] (*b*) Injunctions in restraint of pending suits and pending applications for execution, that is Injunctions in restraint of the execution of decrees already made and upon which decrees at the date of the application for an Injunction, steps have been already taken in execution;[44] (*c*) Injunctions which are issued not in general restraint of execution whether pending or not, but in prevention of wrongful sale in execution of a decree, may be conveniently considered separately from the two classes above mentioned.[45]

---

37. See *In re N. P. Essappa Chettiar*, AIR 1942 Mad. 756; *Commr. of Rishira Municipality* v. *Anil Kr. Mustaffi*, 83 CWN 888; *Zamila Khatoon* v. *Umar* (1981) 2 Cal. H. N. 123; *Kaliprasad Das* v. *Girdhar Sahu*, AIR 1978 Ori 8; *Bansi* v. *Sewakisan*, AIR 1979 Bom. 274; *Abdul Sattar v. Mohd. Sayeed*, 1982 A.L.J. 611.

38. *Corporation Calcutta* v. *Bejoy Kumar*, 50 C., 813 (1923), 38 C.L.J., 360; 27 C. W. N., 787.

39. *Appu* v. *Raman*, 14 M., 425 (1891); *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 M., 338 (1895).

40. Act 47 of 1963, s. 41 (*a*) & (*b*).

41. *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352 (1875); *Appu* v. *Raman*, 14 M., 425, 429, 430 (1891). See *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 M., 338 (1895).

42. *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352 (1875).

43. *Appu* v. *Raman*, 14 M., 425, 430 (1891). The decisions in *Kunhamed* v. *Kutti*, 14 M., 167 (1891); *Anantnath Dey* v. *Mackintosh*, 6 B. L. R., 571 (1871), appear also to be cases of this kind.

44. See, *Appu* v. *Raman*, 14 M. 425.

45. *Brojendra* v. *Rup Lall*, 12 Cal. 515.

CENTRAL LIBRARY

In the case of a fraudulent decree the remedy would appear to be by way of Injunction to restrain the party from executing the decree.[46]

(i) Contemplated proceedings may be stayed.—The Specific Relief Act only forbids the issue of Injunctions in restraint of *pending* proceedings.[47] So in England it has been held that although the Court has no longer jurisdiction to restrain a pending action yet an Injunction may be granted to restrain the *institution* of proceedings.[48] Thus an Injunction has been granted to prevent a wife from instituting proceedings against her husband in the Divorce Court for restitution of conjugal rights;[49] and a person claiming to be a creditor of a company was restrained by Injunction from presenting a petition for winding up the company when the debt was disputed and the company was solvent.[50] If the proceeding be not pending at the date of the institution of the suit in which the Injunction is sought, but is contemplated, and threatened only, there is nothing, the case being otherwise proper, to prohibit an Injunction being granted against the actual institution of such threatened proceedings.[51] And this is so, whether such proceedings be an intended suit[52] or intended application for execution of any decree which may be obtained in a contemplated action,[53] or which has already been made.[54] In the first of the cases last cited a Subordinate Judge prohibited certain parties from executing a decree which has been passed in their favour, and which was on the file of the District Judge, it appeared that no application for execution had yet been made. It was held that the prohibition was not an Injunction to stay proceedings in the Court of the District Judge, but that the effect of the Injunction granted by the Subordinate Judge was to prevent those parties from applying to the District Court to execute its decree. As no application for execution had yet been made, and as, so long as the Injunction was in force, none could be made, therefore no pending proceeding of a Court was restrained by the Injunction.[55]

---

46. *Kunhamed* v. *Kutti*, 14 M., 167 (1891). *Harshamukhi* v. *Nabakrishna*, 44 CWN 433.

47. S. 41 (*a*).

48. *Besant* v. *Wood*, 12 Ch. D., 630; *Hart* v. *Hart*, 18 Ch. D., 671; Kerr, *Inj.*, 8.

49. *Besant* v. *Wood*, supra.

50. *Circle Restaurant & Co.* v. *Lavery*, 18 Ch. D., 555; *Cadiz Water Works Co.* v. *Barnett*, (1874) 19 Eq. 182; *Re. A Company*, [1894] 2 Ch. 349.

51. See *Moran* v. *River Steam Navigation Company*, 14 B. L. R., 352 (1875); *Appu* v. *Raman*, 14 M., 425, 430 (1891).

52. See *Moran* v. *River Steam Navigation Company* (judgment of Original Court).

53. See *Moran* v. *R. S. N. Co.* (judgment of Court of Appeal).

54. *Appu* v. *Raman*, 14 M., 425, 430 (1891); and see also *Anantanath Dey* v. *Mackintosh*, 6 B. L. R., 571 (1871); *Kunhamed* v. *Kutti*, 14 M., 167 (1891).

55. *Appu* v. *Raman*, 14 M., 425, 430 (1891); see *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 M., 341 (1895). It has been suggested that the decision first cited is erroneous inasmuch as s. 56, cl. (*b*), refers to proceedings *whether pending or not* and prevents an injunction, whereas in the case cited the Court was not subordinate, and that clause permits an Injunction to stay the institution of proceedings in a Subordinate Court only (MLJ, Vol. v. May and June, 1895 pp. 162, 165). But it is admitted that, Injunctions acting merely *in personam*, it is difficult to understand this departure from English law, according to which the *institution* of proceedings in any Court can be stayed. It is submitted that the decision is correct and that the proceeding referred to in cl. (*b*) is a pending proceeding.

CENTRAL LIBRARY

(ii) But not pending proceedings unless there is danger of.—An Injunction cannot be granted to stay a judicial proceeding *pending* at the institution of the suit in which the Injunction is sought unless such restraint is necessary to prevent a multiplicity of proceedings, [56] and the proceedings sought to be restrained is that of a Court subordinate to that from which the Injunction is sought. [57] These provisions of the Specific Relief Act have in view two important prerogatives of the Court of Chancery, *viz.*,—*Firstly*, that of staying pending proceedings at law by what was known as a common Injunction in all cases where the defendant would show a good equitable defence ; a prerogative which has now been abolished by the Judicature Act though the equitable plea upon which such an Injunction would formerly have been based may be relied on by way of defence in the action. [58] *Secondly*, that of suppressing useless litigation and of preventing a multiplicity of suits, the design being to procure repose from perpetual litigation. [59] Clause (*a*) [60] of section 56 of the Specific Relief Act [now cl. (*a*) of s. 41 of the Specific Relief Act, 1963] is apparently taken from section 24, cl. 5 of the English Judicature Acts of 1873 which was as follows :—"No cause or proceedings at any time pending in the High Court of Judicature or before the Court of Appeal shall be restrained by prohibition or Injunction." The object of the enactment appears to have been to do away with the use of Injunctions as a means for controlling proceedings in other Courts and it has been adopted in Act I of 1877 (now Act 47 of 1963) to prevent in the Courts of this country the use of any such jurisdiction. [61] Where judicial proceedings are pending as where a decree has been made and at the date of the application for an Injunction proceedings have been commenced and are pending to execute that decree then, unless the proceedings are pending in a subordinate Court and restraint is necessary to prevent a multiplicity of proceedings, no Injunction can issue to restrain such execution. [62]

(iii) Multiplicity of proceedings.—Particularly, since the passing of the Specific Relief Act an Injunction may properly be granted if, on a consideration of the facts of the case, the Court thinks that that remedy is necessary in order to prevent repetition of injury and multiplicity of suits. [63] The Specific Relief

---

56. Act 47 of 1963, s. 41 (*a*). *See Deno Bundhu Nundy* v. *Hari Mati Dassee*, 31 C., 480 (1904).

57. Act 47 of 1963, s. 1963, s. 41(b). See *Deno Bunhhu Nundy* v. *Hari Mati Dassee*, 31 C., 480 (1904). See *Cotton Corpn. of India* v. *United Industrial Bank*, A.I.R. 1983 S.C. 1272 (The expression "injunction in s. 41(*b*) comprehends both interim and perpetual".) Also see *O.N.G.C* v. *Western Co of America*, A.I.R. 1987 SC 674 (injunction restraining enforcement of an award in Foreign Court pending suit).

58. v. *ante*, § 47.

59. Story, *Eq.*, § 852, *et seq.*, 2nd English Ed. Nelson's *Specific Relief Act*, 290, 291. *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 ; *Cotton Corpn. of India Ltd.* c. *United Industrial Bank*, A.I.R. 1983 S.C. 1272. See, Sarkar's *Specific Relief Act* (13th ed.) pp. 499-500.

60. The report has "cl. (*b*)," but this is an error.

61. *Appu v. Raman*, 14 M., 425, 429 (1891).

62. *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 M., 338 (1895) ; and see *Mahip Singh* v. *Chotu*, 5 A., 429 (1883) ; *Varadacharyula* v. *Narasina Charyula*, 92 I. C., 615 (1926).

63. Act 47 of 1963, s. 41 (*a*) ; *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 220

CENTRAL LIBRARY

Act in this provision has in view the jurisdiction of Courts of Equity by Bills of Peace, bearing some resemblance to Bills *quia timet* to suppress useless litigation and to prevent multiplicity of suits, the design being to procure repose from perpetual litigation. [64] It enacts when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the Court may grant a perpetual Injunction where it is necessary to prevent such multiplicity. [65] Where in England a Bill of Peace would have lain, or as now, an action in the nature of such a bill, that is (*a*) where there is one general right to be established against several or a number of distinct persons, [66] or (*b*) where the plaintiff after repeated and satisfactory trials has established his right and yet is in danger of further litigation and obstruction to his rights from new attempts to controvert it ;[67] under either of these circumstances an Injunction staying a pending judicial proceeding may be granted. By the Act, however, an Injunction against pending proceedings is only granted to prevent multiplicity, [68] and only in cases where the Court in which the proceedings are to be stayed is subordinate to that in which the Injunction is sought. [69]

(iv) And the proceedings stayed are those of a Subordinate Court.— Even if a proceeding be pending which it is necessary to restrain to prevent multiplicity of proceedings, no Injunction can issue unless the proceedings sought to be stayed are those of a Court subordinate to that from which the Injunction is sought. [70] A Court can never restrain by Injunction proceedings pending in another Court which is not subordinate to it except in the case of temporary Injunctions against wrongful sale in execution of a decree. Section 41 of the Specific Relief Act was not intended to affect such temporary Injunctions under Civil Procedure Code, Order 39 rule 1 as amended by Act 104 of 1976. [71] The proceeding which is mentioned in clause (*b*) is a pending proceeding. [72] If the

---

(1887), *per* Wilson, J., "It is most desirable to guard as far as possible against a multiplication of suits." *Per* Straight, J., in *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80, 82 (1887). So also in *Moran* v. *River Steam Navigation Company*, 14 B.L.R., 352 (1875), one of the grounds upon which the Injunction was granted was the prevention of simultaneous litigation in the High Court and the Mofussil between the same parties.

64. See Snell's *Principles of Equity*, 28th ed. p. 661, Kerr *Inj.*, 608. Story, *Eq.*, § 852, *et seq.* Nelson's *Specific Relief Act*, 291. See, Sarkar's *Specific Relief Act* (13th ed.) p. 500.

65. In *Venkatesa Tavker* v. *Ramasami Chettiar*, 18 M., 338, 341, 342 (1895), it was held that the Injunction there prayed for was not necessary on this ground.

66. Story, *Eq.*, §§ 854—856 ; Kerr, *Inj.*, 608. Nelson, *op. cit.*, 291.

67. Story, *Eq.*, § 859 ; Nelson, *op. cit.*, 291.

68. *Dhurunidhar Sen* v. *Agra Bank*, 4 C., at p. 391 (1878).

69. *Id.*, at p. 396 ; Act 47 of 1963, s. 41 (*b*).

70. Act 47 of 1963, s. 41 (*b*). See *Dhurunidhur Sen* v. *Agra Bank*, 4 C., 380 (1878). In *Sethurayar* v. *Shanmugam Pillai*, 21 M., 353 (1897), it was held that the Injunction could not be granted. In *Mulchand* v. *Gill & Co.*, 44 B. 283 (1919), the High Court restrained proceedings in a Mofussil Court.

71. *Amir Dulhin* v. *Administrator-General of Bengal*, 23 C., 351 (1895) ; and see Woodroffe and Ameer Ali's *Civ. Pr. Code*, p. 1166.

72. *Appu* v. *Raman*, 14 M., 425 (1891) ; in which cl. (*b*) of s. 41, Act 47 of 1963, was held not to be applicable as the proceedings sought to be restrained were not pending.

CENTRAL LIBRARY

effect of the Injunction is merely to prevent the *institution* of proceedings in a Court, whether Subordinate or not Subordinate, or to restrain *pending* proceedings in a Subordinate Court, it may go.[73] But if the proceeding is pending in a non-Subordinate Court[74] or in the same Court[75] the Injunction cannot issue except in the case of such wrongful sale.

49. Wrongful sale in execution of decree.—If in any suit it is proved that any property in dispute in the suit is in danger of being wrongfully sold in execution of a decree, the Court may issue an Injunction to restrain such sale.[76] Section 92 of the old Code (VIII of 1859) contained no such provision, and it was accordingly held that property which was about to be sold in execution could not be said to be in danger of being "wasted, damaged or alienated by any party to the suit."[77] Under the old law, the procedure was by application to the Court of execution to stay the sale of the attached property pending the determination of title in the regular suit which was brought to establish it.[78] But the Legislature has deliberately altered[79] the law as laid down in the first and second of the cases last cited. In section 492 of the last Code, now represented by Order 39, rule 1 as amended by Act 104 of 1976, other words have been introduced, namely, "or wrongfully sold in execution of a decree," and these words must be read with the previous part of the section, that is, "that any property in dispute in a suit is in danger." The law does not say that a property is, or is about, to be wrongfully

---

State Bank of India v. *J. S. Ramamoorthy*, A.I.R. 1983 Mad 197 (Injunction was refused against notice by Bank demanding repayment of loan).

73. *Ib.*

74. *Mahip Singh* v. *Chotu*, 5 A., 429 (1883) ; *Sethurayar* v. *Shanmugan Pillai*, 21 M., 353 (1897). But see *Ram Sadan Biswas* v. *Mothura Mahon Hazra & Ors.* A.I.R. 1925 Cal. 233 (235).

75. *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 M., 338 (1895).

76. Civ. Pr. Code, *O.* 39 *r.* 1 as amended by Act 104 of 1976. The words "or wrongfully sold in execution of a decree" were first added to the section by the Code of 1877 (Act X of 1877), see *Brojendra Kumar Rai Chowdhury* v. *Rup Lall Dass*, 12 S., 515, 517 (1886).

77. *Roy Luchmiput Singh* v. *Secretary of State*, 11 B. L. R., App. 27 (1873) ; s. c., 20 W. R., 11 followed in *Durga Churn Chatterjee* v. *Ashootosh Dutt*, 24 W. R., 70 (1875). An Injunction, however, of this character appears to have been granted in two earlier cases : *Sreenarain Chuckerbutty* v. *A. B. Miller*, 5 B. L. R., 254 note (1870) ; *Rup Lall Khettry* v. *Mohima Chunder Roy*, 5 B. L. R., 254 (1870). In the latter case the defendant, who claimed through persons who were alleged to have no title, was threatening to sell in execution of a decree against those persons' property in the possession of the plaintiff under a decree of Court obtained upon a mortgage executed in his favour by a person having title. See also *Anantnath Dey* v. *Mackintosh*, 6 B. L. R., 571 (1871).

78. *Doorga Churn Chatterjee* v. *Ashootosh Dutt*, 24 W. R., 70 (1875) ; *Roy Luchmiput Singh* v. *Secretary of State*, 11 B. L. R., App. 27, s. c., 20 W. R., 11 (1873) ; *Brojendra Kumar Rai Chowdhury* v. *Rup Lall Dass*, 12 C., 515, 517 (1886).

79. *See* report of Select Committee on the Civil Procedure Bill—"We have empowered the Court to grant an Injunction to stay a wrongful sale in execution of a decree. We have been informed that the corresponding clause of Act VIII of 1859 has been held not to apply to such a case."—*Gazette of India*, 30th Sept. 1876, p. 947.

CENTRAL LIBRARY

sold, but that it is in danger of being wrongfully sold.[80] These words are wide enough to include,[81] and the section is, in fact, most commonly applicable to claims in execution made under Order 21 rule 58 of the Civil Procedure Code as amended by Act 104 of 1976. If a claimant under that section whose claim has been disallowed, institutes a regular suit against the decree-holder, the Court has power under Order 39, rule 1 of the Code as amended by Act 104 of 1976 to grant an Injunction staying the sale pending the decision of the suit.[82] And the Code having been amended so as to admit of the grant of an interlocutory Injunction in such a case, the procedure indicated by Order 39 as amended by Act 104 of 1976 should be followed and a sale should, in the case of applications by third parties, be restrained by Injunction in the suit brought to try the title and not by the order of the Court executing the decree.[83] And in the execution of a decree ordering the sale of property, it is not competent for a Court to refuse to sell it because a stranger, who is in possession of such property, impeaches the decree : the course open to him, if he wishes a stay of execution, being to file a suit and obtain an Injunction for that purpose.[84] But though, where property is in danger of wrongful sale, the Court may issue an Injunction restraining the defendant from enforcing his decree against the property, yet when the Court dismisses the suit in which the Injunction is sought and has been granted, it has no right to further restrain the defendant from execution upon the mere possibility of the Appellate Court reversing its decree. Once the suit is dismissed the Court has, in point of law, no power at all to deal with the proceedings in the suit in which execution has issued.[85] Upon the dismissal of a suit for an Injunction restraining the sale, the Appellate Court may, under Order 39, rule 1 of the Code as amended by Act 104 of 1976, issue a temporary Injunction restraining the decree-holder from proceeding with execution pending the appeal ;[86] and the application may be granted subject to the terms of the applicant giving such security as the Court thinks fit.[87] This decision was dissented from in a case in which the Court held that in a case like this it was impossible to say that the property was in danger of being "wrongfully" sold : that section 492 of the last Code (now represented by Or. 39, r. 1 as amended by Act 104 of 1976) required that it must be "proved" that the property was in such danger and that to hold in such an application this as proved would be to decide the appeal which was not before the Court.[88] But it has been followed in a case in which it was held that when the words "wrongfully sold" were added it was intended that an

---

80. *Brojendra Kumar Rai Chowdhury* v. *Rup Lall Dass*, 12 C., 515, 517, 518 (1886). *See Fulkumari* v. *Ghanshyam Misra*, 31 C., 511 (1903), and as to an Injunction being consequential relief as held in the latter case, see *Kunj Behari* v. *Keshav Lall*, 28 B., 567 (1904).

81. *Brojendra Kumar Rai Chowdhury* v. *Rup Lall Dass*, 12 C., 515 (1886).

82. *Ib.*

83. *Ib.*, ; a case which clearly emphasises the difference between the former and present law.

84. *Purshottam Vithal* v. *Purshottam Iswar*, 8 B., 532 (1884).

85. *Gossain Money Puree* v. *Gour Pershad Singh*, 11 C., 146 (1884) ; referred to in *Yamin-ud-Dowlah* v. *Ahmed Ali Khan*, 21 C., 561 (1894).

86. *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80 (1887).

87. *Ib.* at p. 83.

88. In re *Chando Bibi*, 26 A., 311 (1904), and see Woodroffe and Ameer Ali, *Civ. Pr. Code*, p. 1167.

CENTRAL LIBRARY

Injunction might be granted when property claimed by the applicant was in danger of being sold in execution of a decree against another or even against himself. [89] It is submitted that the question is rather one of fact than of law, though no doubt dealing with the matter as one of fact the decree appealed from would, unless it was clearly erroneous, prove a serious obstacle to the grant of an Injunction. The Code directs that ordinarily before granting an Injunction notice of the application should be given to the opposite party. [90] Where a Court made an order granting a temporary Injunction without directing notice of the application for an Injunction to be issued to the other side, and its order directing stay of sale of property in execution was passed *ex parte* without the other side being given an opportunity to show cause, it was held that the order was irregular. [91] The application should be made without unnecessary delay [92] and should on the face of it disclose a sufficient ground to warrant an order under Order 39, rule 1 as amended by Act 104 of 1976 being made as prayed. [93] The meaning of the word "wrongfully" may, in certain cases, be open to doubt. [94] It is however clear that the property is not in danger of being wrongfully sold when the plaintiff has no title to or interest in it, or if he has an alleged interest, when such interest is not the subject of sale in execution. [95] So where ancestral property was attached in execution of a decree, and a son of the judgment-debtor instituted a suit to establish his rights to the property and made an application for a temporary Injunction directing stay of sale pending the decision of the suit, it was held that, inasmuch as what was advertised to be sold was the right and interest of the plaintiff's father in the property, it could not be said that the property was being wrongfully sold in execution of a decree and the temporary Injunction ought not to have been granted. [96] It has been said that in interpreting this portion of the Code a Judge cannot be too careful as to the mode in which he permits the machinery of the Courts to be used for the purpose of enabling a plaintiff in one suit to delay a decree-holder in another from obtaining the fruits of his judgment by executing his decree in ordinary course against the property of his judgment-debtor. At the same time it is, of course, most desirable to guard, as far as possible, against a mmultiplicity of suits. [97] The Courts will, therefore, amongst other things, consider whether the refusal to grant the application for an Injunction will result in further litigation, and whether any practical injury will result to any one if the Injunction be allowed. [98] It has been held by the Allahabad High Court

---

89. *Abdullah Khan* v. *Banke Lal* (1910), F. B., 33 A., 79, overruling In re *Chando Bibi* (*supra*) ; and *Mehraj Singh* v. *Lala Mal* (1907), 4 A. L. J., 342 ; following *Brojendra Kumar* v. *Rup Lall Dass* (1886), 12 C., 515 ; *Ganga Nand* v. *Balgobind Das* (1884), W. N., 349 ; and *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80 (1885).

90. Civ. Pr. Code, *O.* 39, *r.* 4.

91. *Amolak Ram* v. *Sahib Singh*, 7 A., 550 (1885).

92. *Ib.*, 552.

93. *Ib.*

94. *Kirpa Dayal* v. *Rani Kishori*, 10 A., 80, 82 (1887). See *In re Chando Bibi*, 26 A., 311 (1904), *supra*.

95. *Amolak Ram* v. *Sahib Singh*, 7 A., 550 (1885).

96. *Ib.*

97. See Order 39, rule 1 as amended by Act 104 of 1976.

98. *Per* Straight, J., in *Kripa Dayal* v. *Rani Kishori*, 10 A., 80, 82 (1887).

CENTRAL LIBRARY

that the term "decree." as used in the Code of Civil Procedure, [99] does not include the decree of a Court of Revenue, and that therefore an application under (old) section 492 of the last Civil Procedure Code now represented by Order 39, rule 1 as amended by Act 104 of 1976 for stay of sale in execution of a decree of a Court of Revenue in a suit under section 93 of Act XII of 1881 cannot be entertained by a Civil Court. [1] But it has been held that though a decree may have been passed by a Revenue Court, proceedings in execution in a Civil Court may be stayed by the latter in a suit brought for a declaration that the decree was obtained by fraud and was without jurisdiction. [2]

Section 41 of the Specific Relief Act was not intended to and does not, affect temporary Injunctions applied for under (old) section 492 of the (old) Code against the wrongful sale of property in execution of a decree. Therefore, a Subordinate Court may issue an Injunction restraining proceedings in execution pending before a Superior Court. [3] Though as a general rule, the principles governing the grant of temporary and permanent Injunctions are the same, [4] yet the substantial difference which exists between an Injunction in general restraint of execution and an Injunction against wrongful sale in execution only, affords a reason for dealing with an Injunction of the latter class on a special footing. That difference lies in the nature of the subject-matter of the Injunction and of the proceedings restrained. In the case of an Injunction in general restraint of execution, the applicant may have himself been a party to the suit in which execution has issued, and what is sought to be restrained is execution of the decree in its entirety. A wrongful sale is generally threatened when the property of some third person is taken in execution of a decree in a suit between others to which he was no party. [5] In such a case an application by a third person for an Injunction is in effect an application for restraint of execution only in so far as such execution involves the wrongful sale of property belonging to the applicant. The Injunction, therefore, is primarily directed against the sale, and not the execution generally, which may, even when an Injunction has been granted, proceed, except with respect to the particular property, the subject of the Injunction. Further, as was pointed out in the case last cited, [6] the Court of execution deals with the matter only in a summary way, and it is therefore not anomalous or inconvenient, if its order, even if it be the order of a superior Court, should be made subject to the result of a regular suit which may lie in a Court of an inferior grade. On the other hand, when an Injunction is sought restraining execution in its entirety by a person against whom, and whose property generally, execution has been directed to issue in a suit to which he was a party, there is, in fact, a substantial interference in a judicial proceeding, for what is put in issue by

---

99. S. 2(2).

1. *Onkar Singh* v. *Bhup Singh*, 16 A., 496 (1894).

2. *Sing* v. *Kamaleswara Prosad*, 16 C. L. J., 555 (1912).

3. *Amir Dulhin* v. *Administrator-General of Bengal*, 23 C., 351 (1895) ; *A Milton Co.* v. *Ojha Automobile Engineering Co.*, A.I.R. 1931 Cal. 279; *Raghubir* v. *Shankar*, A.I.R. 1934 All. 876.

4. See *Metal Corpn.* v. *Subbaiyer*, 53 C.W.N. 378 ; *Monoharlal* v. *Seth Hiralal*, A.I.R. 1962 S.C. 527.

5. See High, *Inj.*, § 119, *et seq.* ; Hilliard, *Inj.*, p. 249.

6. *Amir Dulhin* v. *Administrator-General of Bengal*, 23 C., 351 (1895).

CENTRAL LIBRARY

the application for an Injunction is not whether a particular property is liable to be sold or not, but whether execution should proceed against particular person at all. In the one case the Injunction is directed against the sale as an incident of execution, in the other against the execution itself. In the first case the person seeking the Injunction does not dispute the decree or the issue of execution against the property of the judgment-debtor, but contends that his own property is being wrongfully sold as that of the judgment-debtor. In the second case the applicant contends, for the special reasons alleged, that execution should not issue against him at all. In the latter instance, if the execution-proceedings be not pending, their institution may in a proper case be restrained ; but if they be pending, they can only be stayed, if there be danger of multiplicity of proceedings and the proceeding in question is that of a Court subordinate to that from which the Injunction is sought. Where a defendant has not invaded or threatened to invade a plaintiff's rights and there is no risk of multiplicity of proceedings, section 41 of the Specific Relief Act bars a suit for a declaration that defendant had no title or for a perpetual Injunction forbidding him to take possession of property by executing his decree. [7]

Where a decree has been obtained against a person based on a personal obligation which ceases at his death and such obligation is not binding on and cannot be enforced against his heir and representative, an Injunction will issue restraining the execution of that decree against such heir and representative. The latter was no party to the suit in which the decree was passed, and as he bears no representative liability, there is no decree enforceable against him. [8]

In the case of suits to restrain execution of adjusted decrees, it is now established that section 47 of the Civil Procedure Code is to be liberally construed, and that any suit which interferes with the conduct of execution-proceedings by the Court executing the decree is prohibited, such as a suit for an Injunction restraining execution of an alleged adjusted decree. [9]

---

7. *Karnadhar Haldar* v. *Hari Prasad Roy Chaudhuri* (1910). 37 C., 731 ; following in principle *Dhuronidhur Sen* v. *Agra Bank* (1878), 4 C., 380 ; not following *Appa* v. *Raman*, 14 M., 425.

8. *Krishnaji* v. *Vithalrao*, 12 B., 80 (1887).

9. *Azizan* v. *Matuk Lall Sahu*, 21 C., 437 (1893), followed in *Deno Bandhu Nundy* v. *Hari Mati Dossee*, 31 C., 480 (1903), which was a suit for staying execution and declaration of satisfaction and in which Hill, J., was of the opinion that the prayer for Injunction conflicted with the provisions of s. 56 of the (old) Specific Relief Act. As to Injunctions against breach of covenant not to proceed in execution against a particular property, see *Kalyanbhai Dipchand* v. *Ghanasham Lall Jadunathji*, 5 B., 29, 31 (1880).

CENTRAL LIBRARY

CHAPTER V

INJUNCTIONS AGAINST ALIENATION, WASTE, DAMAGE OR FRAUDULENT DISPOSITION OF PROPERTY PENDENTE LITE

Synopsis

50. Injunctions against alienation, waste ; damage or fraudulent disposition of property *pendente lite* :
(i) *Quia timet* action ;
(ii) Injunctions against waste, damage or alienation *pendente lite* ;
(iii) Fraudulent disposition of property by the *pendente lite*.
50a. Mareva Injunction.
50b. Anton Piller Order.
51. Appeal from such Injunctions.

50. Injunctions against alienation, waste, damage or fraudulent disposition of property pendente lite.—Sometimes an Injunction, whether temporary or perpetual, is the instrument by which the Court specially enforces the obligation if arising in contract, or specifically restrains the violation of those other obligations which are the subject of the law of tort. In other cases, a temporary Injunction is merely incident or ancillary to the general relief in this sense that it seeks merely to preserve the *status quo*, enjoining interference *pendente lite* by waste, damage or alienation with the subject of litigation, or the fraudulent disposition of his property by a party defendant to a suit. Order 39, rules 1 and 2 of the Code regulate the grant of temporary Injunctions, the latter relating to temporary Injunctions, in cases of contract or tort, the former relating to Injunctions against interference with the subject of litigation here spoken of as Injunctions *pendente lite*.

In the succeeding consideration of Injunctions in cases of contract and tort, it has not been thought necessary to separate the consideration of temporary and perpetual Injunctions in cases of contract or tort, but to discuss the cases together without regard to the kind of Injunction sought ; for the kinds of cases, whether of contract or tort, in which an Injunction, either temporary or perpetual, may be granted, do not differ from each other. If the case, as alleged, be such that at the hearing a perpetual Injunction would not be granted, then clearly a temporary Injunction ought not to be granted before the hearing ; though, of course it does not follow that a temporary Injunction will be granted, before the hearing, in every case in which a perpetual Injunction might fitly be granted at the hearing, for to justify a temporary Injunction, not only must the case be such that an Injunction is the appropriate relief, but there must be the further ingredient that, unless the defendant is at once restrained by Injunction, irreparable injury or inconvenience may result to the plaintiff, before the suit can be decided upon its merits.[1]

---

1. Collett's Specific Relief, 263, 264. See Sarkar's *Specific Relief Act* (13th ed.), p. 403.

CENTRAL LIBRARY

(i) Quia timet action.—The principles of *quia timet* action have been summarised thus : "Although the plaintiff must establish his right, he may be entitled to an injunction even though an infringement has not taken place but is merely feared or threatened ; for "preventing justice excelleth punishing justice." This class of action, known as *quia timet*, has long been established, but the plaintiff must establish a strong case ; "no one can obtain a *quia timet* order by merely saying 'Timeo'. He must prove that there is an imminent danger of very substantial damage, or further damage, e.g., by showing that the threatened act 'is attended with extreme Probability of irreparable Injury to the Property of the Plaintiffs, including also Danger to their existence.' A quia timet injunction may be granted to restrain an anticipated breach of statutory duty." (Snell's *Principles of Equity,* 28th ed., p. 630).

In the limited class of cases which are now to be considered, the Injunctions are always, from the nature of the case, of a temporary character and may thus be separately considered.

Injunctions may thus be roughly divided into (*a*) Injunctions whether temporary or perpetual in cases of (*i*) contract or (*ii*) tort, which classes of cases are dealt with in the succeeding chapters ; and (*b*) temporary Injunctions against, (*i*) interference with the subject-matter of litigation, or (*ii*) fraudulent disposition of property pending litigation.

With respect to these latter, the Code provides that if in any *suit* it is *proved* by affidavit or otherwise, (*a*) that any *property in dispute in a suit* is in danger of being *wasted, damaged,* or *alienated* by any party to the suit, or *wrongfully sold in execution* of a decree, or (*b*) that the defendant threatens or intends to remove or dispose of *his* property with a view to *defraud* his creditors, the Court may by order grant a temporary Injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders. [2]

(ii) **Injunctions against waste, damage or alienation pendente lite.**—The power given by Order 39, rule 1 of the Civil Procedure Code is substantially the same as that long exercised by English Courts of Equity. The object is to restrain the defendant from doing anything which may prevent the property remaining *in status quo* during the pendency of a suit, upon the principle that when the plaintiff seeks to recover property *in specie* the defendant shall not be allowed to decide the question in his own favour by dealing or making away with the property, the right to which is the question in dispute. So the Court will restrain not only waste or damage to the subject of litigation, whether movable or immovable property, but may also restrain the mere alienation of property, whether movable or immovable. For in every case the plaintiff might be put to the expense of making the vendor a party to the proceeding, and at all events his title, if he prevails in the action, may be embarrassed by such new outstanding title under the transfer. [3] The Court, even though it acts on the doctrine of *lis pendens,* will prevent, if possible, the necessity of proceeding on such a principle

---

2. Civ. Pr. Code, *O.* 39, *r.* 1.

3. See Collett's *Specific Performance,* 265—273 ; Story, *Eq. Jur.,* §§ 906—908, 2nd English Edition.

CENTRAL LIBRARY

and will not, in a proper case, deprive a suitor of the more effective protection of an Injunction. [4]

Rule 1 of Order 39 of the Code deals with suits in which a claim is made for specific property in the hands of the defendant, and it is only in such suits that any question can arise of waste, damage or alienation. The object of the exercise of the jurisdiction is to secure the safety of that specific property which is in dispute in the suit pending the litigation, as also at its close to secure that any decree which may be made with reference thereto shall not prove unfructuous. [5]

The power, however, of issuing an Injunction *pendente lite* ought to be most cautiously exercised. It is only in cases where property which it is essential should be kept in its existing conditions during the pendency of the suit, is in danger of being destroyed, damaged or put beyond the power of the Court, that the latter ought to interfere so as to restrain persons who may turn out in the final event of the litigation to be the actual owners of the property, from proper enjoyment and possession of it. [6]

Immovable property should always, if possible, be retained *in status quo*, until the suit which is to determine the title to it shall have been decided. [7]

The restraint imposed need not necessarily be absolute, but should be such as the circumstances require. So where the subject-matter of the Injunction comprised mortgage-bonds and Government Promissory Notes, the order of Injunction while prohibiting any alienation of or dealing with the bonds or notes by the defendant, permited him to sue upon the mortgage-bond and take steps to realize the amount covered thereby, and ordered the money when realized to be kept in Court, until the disposal of the suit; and as regards the Promissory Notes, permitted him to draw the interest as it fell due from time to time. [8]

In granting a temporary Injunction restraining the alienation of property, the subject of suit, the Court will, as in the case of other Injunctions, first see that there is a *bona fide* contention between the parties, and then on which side, in the event of obtaining a successful result to the suit, will be the balance of inconvenience [9] if the Injunction do not issue, bearing in mind the principle (already alluded to) of retaining immovable property *in status quo*. [10]

The wrongful sale of property in execution of a decree is only one form of alienation which may be restrained *pendente lite*. [11] Even a judicial sale, if wrongful, will be restrained upon principles and under circumstances which have been dealt with in the preceding chapter of this book.

In order to obtain an Injunction under this section there must be (*a*) a *suit* in which the Injunction may be granted, [12] and (*b*) the threatened danger of

---

4. *Hood* v. *Aston*, 1 Russ., 412, one of the large number of cases dealing with Injunctions restraining the negotiation of negotiable instruments and the transfer of stock, securities and other like *indicia* of property.
5. *Goluk Chunder Gooho* v. *Mohim Chunder Ghose*, 13 W. R., 95, 96 (1870).
6. *Mun Mohinee Dosse* v. *Ichamoyee Dossee*, 13 W. R., 60 (1870), *per* Phear, J.
7. *Gomes* v. *Carter*, 1 Ind. Jur., N. S., 411 (1866).
8. *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 467 (1895).
9. See *Goluk Chunder Gooho* v. *Mohim Chunder Ghose*, 13 W. R., 95, 96 (1870).
10. *Gomes* v. *Carter*, 1 Ind. Jur., N. S., 411 (1866), *per* Phear, J.
11. Collett, *op. cit.*, 265.
12. Civ. Pr. Code, *O.* 39, *r.* 1. v. *post.*

CENTRAL LIBRARY

waste, damage or alienation must be *alleged* and *proved,*[13] (*c*) in respect of property which is in *dispute* in that suit.[14]

Firstly, the order of Injunction must be made in a regular suit brought to try the title to the property in dispute. It cannot be made summarily. So it was held that the Lower Court could not, in the Summary Jurisdiction pass an order declaring invalid a sale of a house made by a manager and granting an Injunction to prevent the demolition of such house, but should have left the title of the parties to be established in a regular suit.[15] And where there is a remedy by a regular suit, the High Court will not exercise its extraordinary powers under section 15 of the Charter. So, where money due to an insolvent was deposited in Court, and the latter ordered it to be paid to creditors who had attached the money instead of to the Official Assignee, the High Court refused to interfere under those powers, holding that the remedy open to the assignee was a suit for an Injunction to restrain the creditors and an order for an Injunction under the Civil Procedure Code.[16] A Court has no jurisdiction to issue an Injunction to stay waste, damage or alienation with respect to property in dispute in a suit pending in another, even though it be a Subordinate Court. If the suit be first withdrawn from such last mentioned Court to the first Court, the latter may then issue an Injunction.[17] Where a Court has no jurisdiction to make an order of Injunction, it can have no jurisdiction to modify such order.[18]

Secondly, the applicant for the Injunction must allege that the property in dispute in the suit is in danger of being wasted, damaged or alienated. Accordingly where the applicant made no such allegation but merely stated that the defendant wished to realize the debts due to her by bringing actions in Court, and no proof whatever was given of any intention to waste, damage or alienate, an Injunction which had been granted was set aside.[19] Not only must there be an allegation but proof must be given by affidavit or otherwise of that allegation of danger of waste, damage or alienation.[20] Some reason should be shown why the property to which the plaintiff lays claim should, pending the dispute, be kept from alienation.[21]

A Court having jurisdiction to make an order of Injunction should not do so without some evidence that the property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit.[22] The necessary proof may be afforded by the admission of the defendant. So, where it was admitted by the defendant that he intended to take away the money in question

---

13. *Ib.*, v. *post* ; *Prosunno Moyee Dossee* v. *Wooma Moyee Dossee*, 14 W. R., 409 (1870).

14. *Ib.*, v. *post* ; *Goluck Chunder Gooho* v. *Mohim Chunder Ghose*, 13 W. R., 95, 96 (1870).

15. *Mukrumunnissa* v. *Abdool Subbar*, 17 W. R., 171 (1872).

16. In the matter of *Mr. A. B. Miller, Official Assignee*, 12 W. R., 103 (1869), s.c., 4 B. L. R., A. C., 72*n*.

17. *Dhundiram Santukram* v. *Chandanabai*, 2 Bom. H. C. R., 98 (1865).

18. *Ib.*

19. *Prosonno Moyee Dossee* v. *Wooma Moyee Dossee*, 14 W. R., 409 (1870).

20. Civ. Pr. Code, *O.* 39, *r.* 1 ; *Prosunno Moyee Dossee* v. *Wooma Moyee Dossee*, 14 W. R., 409 (1870).

21. *Mun Mohinee Dossee* v. *Ichamoyee Dossee*, 13 W. R., 60 (1870).

22. *Dhundiram Santukram* v. *Chandanabai*, 2 Bom. H. C. R., 98 (1865).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

in the suit (which money had been attached by, and was in deposit with, the Magistrate) for the prupose of investing it in trade; the Court *held* that this admission was sufficient evidence to show that that money was in danger of being alienated within the meaning of the Code. If the suit had been an ordinary suit for money, the case would have stood on quite a different footing; for then it would not have been a suit for a specific property, and consequently no question as to whether that property was in danger of being wasted or alienated could have arisen. In the case now cited, however, the subject-matter of contention was a specific sum of money in the custody of the Magistrate; and when the defendant admitted that he intended to use that money for the purposes of trade, that admission was held sufficient to show that he intended to alienate it. It was possible that the contemplated trade might be successful, but it was also under the circumstances probable that it would not be so, and that the money in suit being spent, the plaintiff would be unable to recover that specific object for which it had been brought. If the plaintiff ultimately obtained a decree for this sum of money and the defendant was allowed to take it away in the meantime to invest it in trade, the decree, so far as this particular item of property was concerned, would probably be unfructuous, and the loss likely to accrue to the defendant by its being retained under attachment being comparatively small compared with the difficulty there might be in realizing the sum from the defendant, if once it was expended for any purpose, the Court upheld the Injunction which had been granted against its alienation. [23]

Thirdly, the property must be that in suit. Where, however, it was admitted on the part of the plaintiff that one of the defendants was equally interested with herself in the subject of suit, the plaintiff's own case being that she had only an undivided half-share of the property in question; it was *held* that to issue an Injunction which should affect an undivided half-share only was an impossibility: that the Injunction must have the effect of infringing the right of property of the one defendant, who was admitted by the plaintiff to be a part-owner with her; that there was nothing in the case to warrant so extreme a step as that, and therefore that the Injunction which had been granted should be dissolved. [24]

Whether a Receiver will be appointed or an Injunction granted in a case of waste or alienation will depend upon the particular facts proved. When in dealing with the question raised before it, the Subordinate Court seemed to have been of opinion that the plaintiffs were entitled to have a Receiver appointed, if it appeared that they had a fair question to raise, and if there was strong ground of apprehension that the property in dispute would be lost or wasted, if not placed in the hands of a Receiver whom it accordingly appointed; it was *held* in appeal that in thus dealing with the matter, the Lower Court had fallen into an error: that though it would no doubt have been right, if it had made an order for an Injunction, the distinction which exists between the case of an Injunction and Receiver had not been kept in view. That distinction is that while in either case it must be shown that the property should be preserved from waste or alienation, in the former case it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged; while

---

23. *Goluck Chunder Gooho* v. *Mohim Chunder Ghose*, 13 W. R., 95 (1870).
24. *Mun Mohinee Dossee* v. *Ichamoyee Dossee*, 13 W. R., 60 (1870).

CENTRAL LIBRARY

in the latter case a good *primâ facie* title has to be made out.[25] The Appellate Court accordingly set aside the order for the appointment of a Receiver and in lieu thereof granted a temporary Injunction in the terms of the section now considered.

(iii) **Fraudulant disposition of property by the defendant pendente lite.**—If in any suit it be proved by affidavit or otherwise that the defendant threatens, or is about to remove or dispose of *his* property with intent to defraud his creditors, the Court may, by order, grant a temporary Injunction to restrain such act or give such other order for the purpose of staying and preventing the removal or disposition of the property as the Court thinks fit or refuse such Injunction or other order.[26] This provision differs from that enacted by Order 39, rule 1, of the Code, in that the property dealt with by the Injunction is not the property in dispute in the suit, namely, that to which both parties lay claim and the title to which has to be decided, but is property the title to which is admittedly in the defendant, and, therefore, not in dispute in the suit. It presupposes a general intention on the part of the defendant to defeat and defraud his creditors and permits of an Injunction analogous to the remedy of attachment before judgment provided for in Order 38 of the Code.[27] The ordinary rule is that, pending a suit to enforce a general claim against a person there cannot be an Injunction to restrain him from parting or dealing with his property, not being property specifically in dispute in the suit.[28] When, however, such intended parting and dealing with property is not done in the *bonâ fide* exercise of ownership, but with an intent to defraud persons, who being creditors of the owner, have or might have the right to resort to such property in satisfaction of their claim, there arises in their behalf an equity to restrain such threatened dealing with the property even as against its legal owner. Both an attachment under Order 38, rule 5 of the Civil Procedure Code and an Injunction under Order 39, rule 1, clause (*b*) have as their subject-matter not the property in suit, but the property of the defendant ; therefore, applications under these sections are clearly distinguishable from an application for an Injunction under Order 39, rule 1, clause (*a*) against the waste, damage and alienation of property which is in dispute in the suit. And as applications under Order 38, rule 5, and Order 39, rule 1, clause (*b*) are both distinguishable from an application under Order 39, rule 1, clause (*a*), so also applications under Order 38, rule 5 and Order 39, rule 1, clause (*b*) respectively, are clearly distinguishable from each other. Order 38, rule 5, is applicable only to cases where it is probable that the defendant is about to make away with his property so as to make it impossible for the plaintiff to execute any possible decree against him, and empowers the Court in such a case to make an order calling upon the defendant for security, and in default thereof, to attach the property. It has no application where the property is the *property in suit* which must, if necessary, be followed under the provisions of Order 39, rule 1, clause (*a*). The latter section applies to a case where it is shown to the satisfaction of the Court that the defendant in possession is likely to damage and make away with any property in dispute in the suit, and empowers

---

25. *Chandidat Jha* v. *Padmanand Singh Bahadur*, 22 C., 459, 464, 465 (1895).
26. Civ. Pr. Code, *O.* 39, *r.* 1, cl. (*b*).
27. Collett, *op. cit.*, 265.
28. See *Robinson* v. *Pickering*, 16 Ch. D., 606.

CENTRAL LIBRARY

the Court in such a case to issue an Injunction to the defendant to refrain from the particular act complained of.[29] But though Order 38, rule 5 and Order 39 rule 1, clause (*a*), have both this in common that the property to be dealt with by the Court is not that in dispute in the suit, the following important differences exist between these sections. In the first place, the property is actually attached in the one case, while in the other the property is left in the owner's hands subject only to the prohibition enjoined by the Injunction. *Secondly*, the provisions as to attachment are generally limited to property sufficient to satisfy the decree which may be passed in the suits in which the application for attachment is made. *Thirdly*, there can be no attachment where the property is beyond the jurisdiction of the Court in which the suit is pending;[30] whereas an Injunction, in so far as its action is *in personam*, is not so limited. *Lastly*, any private alienation made subsequent to attachment is null and void; but such is not the case with alienations made subsequent to the issue of an Injunction either under clause (*a*) or (*b*) of Order 39, rule 1, of the Civil Procedure Code as amended by Act 104 of 1976.[31]

50a. Mareva Injunction.—This is a form of security which has become available to a creditor who has filed an action or commenced arbitration proceedings for recovery of his debt before judgment. This is in the form of an injunction restraining the defendant from removing his assets outside the jurisdiction of the English Courts pending the hearing of the action or the reference so that it would enable him to obtain satisfaction of the decree or award which may be passed in the action or the reference. This procedure is of very recent origin in England and derives its name from the decision in *Mareva Compania Naviera, SA* v. *International Bulk Carriers SA*, (1980)1 All E.R. 213; (C.A.). (1975)2 Lloyd Report 509. The said decision followed a previous decision in English Court in *Nippon Yusen Kaisha* v. *Karageorgis* (1975)3 All E.R. 282 : (1975)2 Lloyd Report 137. The principle which is not unknown in India being attachment before judgment under Order 38 Rule 5 of the Civil Procedure Code and in appropriate cases if a plaintiff/petitioner satisfy the Court the conditions laid down in the said provision of the Civil Procedure Code properties are attached before judgment. The English Court evolving the principle and practice of Mareva Injunction invoked an old decision in *Lister & Co.* v. *Stubbs*, 45 Ch. D. 1 at 13 : (1886-90) All E.R. Rep. 797 at 799-800 read with Section 45 of the Supreme Court of Judicature Consolidation Act, 1925 which repeats Section 25(8) of the Judicature Act, 1873 provisions being that a mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just and convenient....." In *Beddow* v. *Beddow* (1978)9 Ch. D. 89 at p. 93 Jessel M.R. gave a very wide interpretation to the said provision. He said—"I have unlimited power to grant an injunction in any case where it would be right to do so....." Lord Denning

---

29. *Joynarain Geeree* v. *Shibpersad Geeree*, 6 W. R., Misc., 1 (1866).
30. Woodroffe and Ameer Ali, *Civ. Pr. Code*, pp. 1149, 1150, and cases there cited.
31. *Delhi and London Bank* v. *Ramnarain*, 9 A., 497, 499 (1887). [In this case the Lower Court issued an Injunction under s. 492, cl. (*b*), but the facts proved do not appear to have warranted the order. That clause required not only proof of attempted alienation, but of intent to defraud. The High Court appears to have considered that the Injunction was not legally issued, but disposed of the case upon another point.]

CENTRAL LIBRARY

M.R. in Mareva case observed—"There is only one qualification to be made. The Court will not grant an injunction to protect a person who has no legal or equitable right whatever. That appears from *North London Railway Co.* v. *Great Northern Railway Co.* (1883)11 O.B.D. 30. But, subject to that qualification, the statute gives a wide general power to the Courts. It is well summarised in Halsbury's *Laws of England* (24 Halsbury's *Laws of England*, 4th ed. para 918). "..... now, therefore, whenever a right, which can be asserted either at law or in equity, does exist, then, whatever the previous practice may have been, the Court is enabled by virtue of this provision, in a proper case, to grant an injunction to protect the right."

In my opinion the principle applies to a creditor who has a right to be paid the debt owing to him even before he establishes his right by getting judgment for it. If it appears that the debt is due and owing and there is a danger that the debtor may dispose of his assets so as to defeat it before judgement the Court has jurisdiction in a proper case to grant an interlocutory judgement so as to prevent him disposing of those assets. It seems to me that this is a proper case for the exercise of this jurisdiction. There is money in a bank in London which stands in the name of these charters. The charterers have control of it. They may at any time dispose of it or remove it out of this country. If they do so, the shipowners may never get their charter hire. The ship is now on the high seas. It has passed Cape Town on its way to India. It will complete the voyage and the cargo will be discharged. And the shipowners may not get their charter hire at all. In face of this danger, I think this Court ought to grant an injunction to restrain the charterers from disposing of these moneys now in the bank in London until the trial or judgement in this action. If the charterers have any grievance about it when they hear of it, they can apply to discharge it. But meanwhile the shipowners should be protected. It is only just and right that this court should grant an injunction. I would therefore continue the injunction. The jurisdiction of passing injunction which is now known as Mareva Injunction is fairly well defined as to its boundaries. The salient features are as follows :

(a) The injunction generally takes the form of an order restraining the defendant from selling, disposing of or otherwise dealing with money or other moveables or from removing them from the jurisdiction of the Court ;

(b) The plaintiff must show a good arguable claim on the merits of his claim ;

(c) There must be ground for believing that the defendant has assets within the jurisdiction and there is a risk of the assets being removed before the decree is satisfied ;

(d) An injunction may be made *ex parte* where there are grounds for believing that if the defendant is given surrendering by notice the asset will be removed ;

(e) The plaintiff must give an undertaking for damages, supported if necessary by a bond of security in case the claim turns out to be baseless ;

(f) The jurisdiction may be invoked whether or not the defendant is domiciled resident or person within the jurisdiction ;

(g) The plaintiff does not acquire the position of a secured creditor as regards the assets frozen by the injunction ;

(h) The jurisdiction may be invoked to restrain the removal of a ship even in a case where the ship cannot be arrested.

CENTRAL LIBRARY

As the power of Court to issue injunction is exerciseable to provide a claim also in the arbitration proceedings on the security for the payment of any award which may be obtained. It may be invoked even before the arbitration has been commenced, but in such a case the Court will impose terms as to the commencement of the arbitration within a specified time. Moreover the jurisdiction is not exercised by the fact that the claim arises under a non-domestic arbitration agreement and must, if the defendant insist be referred to arbitration. [See Mustile & Boyd *Commercial Arbitration*, 1st ed. p.301 and also Snell's *Principles of Equity*, 28th ed. pp. 647-650].

The above principles of Mareva Injunction which is, it is submitted, is analogous to the provisions and principles laid down in Order 39 Rule 5, Order 39 and Rule 2 also Order 40 Rule 1 of the Civil Procedure Code read with Section 151 of the Civil Procedure Code and having regard to the inherent power of the Court in India the said type of order can also be issued in appropriate cases by a Competent Court in India. The said principles and the guidelines for issuing such type of injunction have been indicated in the English decisions in *C. B. S. U. K. Ltd.* v. *Lambert*, (1982)3 All ER 237 CA and also in *Z Ltd.* v. *A & Ors.* [1982]1 All ER 556 CA, *Naiemia Maritime Corp.* v. *Tarve etc.*, [1984]1 All ER 398, *Sanders Lead Co.* v. *Entores Metal Brokers Ltd.*, [1984]1 All ER 857 (CA).

50b. Anton Piller Order.—This is an extraordinary form of *ex parte* order permiting an application to enter premises for purpose of inspection etc. The circumstances in which order will be made *ex parte* and the nature of danger in default of order that applicant might be deprived of a remedy in the action further danger that if notice of Motion given then documents might be destroyed or taken out of jurisdiction. The name of the order is derived from the decision of the Appeal Court in England in *Anton Piller K. G.* v. *Manufacturing Processes Ltd. & Ors.*, (1976)1 All ER 779. That was an action for infringement of copyright. A foreign manufacturer who was the owner of a copyright in designs of a machine and when they came to know that their English agents, were planning to furnish a rival manufacturer with information belonging to the principal which would enable the rival to produce a similar product. The plaintiffs the principal manufacturer wished to restrain the defendants from infringing the copyright using confidential information or making copies of the machines, but they were apprehensive that if the defendants the English Agent have notice of the action they would take steps to destroy the documents or send them out of jurisdiction so that there would be none in existence by the time the action reached the stage of discovery of documents. The principal being the manufacturer accordingly filed an action and made an *ex parte* application for an order requiring the defendants to permit the plaintiffs to enter the defendants' premises in order to inspect, remove and make copies of documents belonging to the plaintiff the manufacturer. In the said decision Lord Denning M. R. after considering the facts of that case observed : "It seems to be that such an order can be made by a judge *ex parte*, but it should only be made where it is essential that the plaintiff should have inspection so that justice can be drawn between the parties ; and when, if the defendant were forewarned, there is a grave danger that vital evidence will be destroyed, that papers will be burnt or lost or hidden, or taken beyond the jurisdiction, and so the ends of justice be defeated ; and when the inspection would do no real harm to the defendant or his case."

CENTRAL LIBRARY

Nevertheless, the enforcement of this order, the plaintiffs must act with due circumspection. On the service of it, the plaintiffs should be attended by their solicitor, who is an officer of the court. They should give the defendants an opportunity of considering it and of consulting their own solicitor. If the defendants wish to apply to discharge the order as having been improperly obtained, they must be allowed to do so. If the defendants refused permission to enter or to inspect, the plaintiffs must not force their way in. They must accept that refusal, and bring it to the notice of the court afterwards, if need be on application to commit.

One might think that with all these safeguards against abuse, it would be of little use to make such an order. But it can be effective in this way : it serves to tell the defendant that, on the evidence put before it, the court is of opinion that he ought to permit inspection—nay, it orders him to permit—and that he refuses at his peril. It puts him in peril not only of proceedings for contempt, but also of adverse inferences being drawn against him, so much so that his own solicitor may often advise him to comply." The said principle was also applied in subsequent decisions, namely, *Exparte Island Records Ltd.,* (1978)3 All E.R. 824 ; *Rankfilm Distributors Ltd.* v. *Video Information Centre,* (1980)2 All E.R. 273 and *Yousif Salama,* (1980)3 All E.R. 405 ; *Emanuel* v. *Emanuel,* (1982)2 All E.R. 342 and *Distributory Automatici Italia SPA* v. *Holford General Trading Company Ltd.,* (1985)3 All E.R. 750.

The above two types of injunctions although recently acquired great importance and prominence in the modern set up in England can also possibly be passed by the Courts in India which is a developing country and very fast catching up other advanced countries of the world and similar types of situation are arising every day in commercial transactions and relationship between traders and merchants. It is submitted that the powers of Court in India under relevant provisions of the Civil Procedure Code and Specific Relief Act are wide enough to cover those two types of order of injunctions referred to above.

51. Appeal from such Injunctions.—An appeal lies from an order passed either under clause (*a*) or clause (*b*) of Order 39, rule 1, of the Code of Civil Procedure as amended by Act 104 of 1976 dealt with in this Chapter.[32] But in the undermentioned cases a second appeal was held not to lie.[33] No appeal lies from an order refusing to grant an Injunction without notice.[34] A permanent Injunction is appealable as a decree.[35] The Court may under Civil Procedure Code, section 115 as amended by Act 104 of 1976, revise an Order[36] or under section 114 review one.[37]

---

32. Civ. Pr. Code, *O.* 43 as amended by Act 104 of 1976.
33. *Ramchandra* v. *Janardhan* (1902), 4 B. L. R., 138 ; *Venkatapathi Naidu* v. *Terumalai Chetti* (1901), 24 M., 447.
34. *Luis* v. *Luis,* 12 M., 186 (1888).
35. *Sadagopa* v. *Krishnamachari* (1889), 12 M., 364.
36. *Gossain Monee Puree* v. *Gour Pershad Singh* (1884), 11 C., 146.
37. *Dhuronidhur Sen* v. *Agra Bank* (1879), 5 C., 86.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

CHAPTER VI

INJUNCTIONS IN THE CASE OF OBLIGATIONS ARISING FROM CONTRACT, TRANSFER OF PROPERTY, OR TRUST

Synopsis

52. Contracts, Transfers of Property and Trusts :
    (i) Law in India relating thereto ;
    (ii) and the relief applicable in respect thereof.
53. Relief by Injunction :
    (i) Temporary ;
        Arbitration proceeding ;
    (ii) Perpetual ;
    (iii) Mandatory.
54. Relief by damages.
55. Conditions upon which Injunctions in cases of contract will be granted :
    (i) Jurisdiction ;
    (ii) The agreement must constitute a contract :
        (a) Void agreement
        (b) Voidable agreements.
    (iii) Such contract must not be one, the performance of which would not be specifically enforced :
        (a) Contracts which cannot be specifically enforced :
            (1) Personal service
            (2) Sale of goodwill
            (3) Uncertainty of term in a contract
            (4) Volition of parties
            (5) Vague agreement.
        (b) No Injunction will be granted in respect of the breach of such contracts.
        (c) Except in certain cases of negative agreements coupled with affirmative agreements not specifically enforceable.
    (iv) The operation of the law relating to the registration of documents must not be affected.
56. Varieties of Covenants :
    (i) Affirmative
    (ii) Negative
    (iii) Affirmative coupled with negative.
        Subba Naidu v. *Haji Badsha Shahib*
57. Specific Performance of affirmative agreements.
58. Injunctions in aid of and ancillary to Specific Performance.
59. Injunction to restrain the breach of negative agreements.
60. In the case of obligations arising in contract, the Court will be guided by the rules and provisions relating to Specific Performance :
    (i) Cases in which Specific Performance is enforced
    (ii) Contracts of which the subject has partially ceased to exist

CENTRAL LIBRARY

(iii) Specific Performance of part of contract :
  (a) Where part unperformed is small
  (b) Where part unperformed is large
  (c) Independent part of contract
(iv) Liquidation of damages is not a bar to Specific Performance
(v) Of the discretion of the Court :
  (a) Delay
  (b) Unfair advantage
    Callianji Harjivan v. *Narsi Tricum*
  (c) Hardship
  (d) Partial performance
(vi) For whom contracts may be specifically enforced
(vii) For whom contracts cannot be specifically enforced :
  (a) Personal bar to the relief
  (b) Contracts to sell property by one who has no title or who is a voluntary settlor
(viii) Non-enforcement except with variation
(ix) Against whom contracts may be specifically enforced
(x) Against whom contracts cannot be specifically enforced

61. Injunctions in certain particular cases of contract or transfer of property
(i) Injunctions between partners :
  (a) Without a view to dissolution
  (b) Pending and after dissolution
(ii) Injunctions against Companies :
  (a) Acts affecting the public
  (b) Third parties—members
(iii) Injunctions against clubs, societies, castes, etc. :
  (a) Clubs and societies
  (b) Castes
(iv) Injunction between mortgagor and mortgagee :
  (a) on behalf of mortgagor
  (b) on behalf of mortgagee
  (c) third parties
  (d) waste
  (e) Injunction between lessor and lessee
  (f) Injunction between donor and donee

62. Injunctions in cases of trust or other fiduciary relations :
(i) Injunctions against trustees
(ii) Injunctions against executors and administrators
(iii) Injunctions against Corporations.

52. Contracts, Transfers of Property and Trusts.—Every promise and every set of promises forming the consideration for each other is an agreement ; and an agreement enforceable by law is a "contract."[1] "Transfer of property" within the meaning of the Act dealing with the same[2] (which regulates the transfer

---

1. *See* Act IX of 1872, s. 2 (*e*), (*h*).
2. Act IV of 1882.

CENTRAL LIBRARY

of property from one living hand to another, as the Indian Succession Act,[3] regulates its transmission after the owner's death) means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons and to "transfer property" is to perform such act.[4] A trust is created by the declaration of the author of the trust or by a transfer by him of the trust-property to another as the trustee thereof.[5] The English law of trusts, recognises two estates or interests in the subject-matter of the trust, namely, the "legal" estate of the trustee and the "equitable" estate of the beneficiary or *cestui que trust*. According to that law there may therefore be two persons holding different estates in the same property.[6] But trusts in the sense of confidences to the existence of which a "legal" and an "equitable" estate are necessary are unknown to Hindu and Mahommedan law.[7] Trusts however in the wider sense of the word, that is to cay, obligations annexed to the ownership of property which arise out of a confidence reposed in, and accepted by, the owner for the benefit of another, are constantly created in India and are frequently enforced by the Courts. Trusts of various kinds have been recognised and acted upon in India in many cases.[8] So also in the territories to which the Indian Trusts Acts extends, a "trust" is an obligation annexed to the ownership of property and arising out of a confidence reposed in, and accepted by, the owner, or declared and accepted by him for the benefit of another, or of another and the owner.[9]

(i) **Law in India relating thereto**.—The law of contract is largely, though not exhaustively, dealt with by the Indian Contract Act.[10] It does not profess to be a complete Code dealing with the law relating to contracts. It purports to do no more than to define and amend certain parts of that law, and there is nothing to show that the Legislature intended to deal exhaustively with any particular chapter or sub-division of the law relating to contracts.[11] It treats of certain general rules applying to all contracts and of certain particular forms of contract

---

3. Act XXXIX of 1925.
4. *See* Act IV of 1882, s. 5.
5. *See* Act II of 1882.
6. *See* Spence's *Equity*, 875.
7. *Kumara Asima Krishna Deb* v. *Kumara Kumara Krishna Deb*, 2 B. L. R., O. C., 36 (1868) ; *Sree Krishnasami Dasi* v. *Ananda Krishna Bose*, 4 B. L. R., O. C., 231 278 (1869).
8. *Tagore* v. *Tagore*, 4 B. L. R., O. C., 34 (1869) ; s. c. in appeal, 18 W. R., 359 (1872) ; *Gazette of India*, Nov. 13, 1880.
9. *See* Act II of 1882, s. 3 ; see also Act 47 of 1963, s. 2 (c).
10. Act IX of 1872 extends to the whole of India except the State of Jammu and Kashmir and is applicable in all Courts and to people of all races within the Indian territories. *Madhub Chunder Paramanick* v. *Raj coomar Doss*, 14 B. L. R., 76 (1874).
11. *The Irrawaddy Flotilla Co.* v. *Bhugwandas*, 18 G., 620 628, 629 (1891) ; the Act purports to be only a partial measure : *Mothoora Kant Shaw* v. *The India General Steam Navigation Company*, 10 C., 184 (1883) ; *Kuverji Tulsidas* v. *The Great Indian Peninsula Railway Company*, 3 B., 113 (1878). It can hardly be called a complete Code, but it may be taken as a kind of summary of the main principles which govern contracts. *Kandhiya Lal* v. *Chander*, 7 A., 313, 321 (1884).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

such as the sale of goods, [12] indemnity and guarantee, [13] bailment, [14] agency [15] and partnership [16] the subject-matter of the Companies Act. [17] It does not affect the provisions of any Statute, Act, or Regulation not thereby expressly repealed, [18] nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of the Act. [19] The Act does not treat at all of certain forms of contract the substantive law relating to which must be sought for either in special enactments passed prior or subsequent to the Act, or in English text-books. [20] The law relating to relief in the case of contracts is contained in the Contract Act, in provisions of the Civil Procedure Code, and in the provisions of the Specific Relief Act dealing with Injunction and Specific Performance. [21] As to that part of the law of contract which is contained in the Contract Act the English and Indian law are substantially the same. In some respects, however, the Contract Act establishes a different rule from that which prevails in England, and in construing it the Courts must not adopt as a rule of construction that it was intended to make the contract law of India the same as the law of England, but must look at the words of the law and gather from them, as well as they can, what was the intention of the Legislature. [22]

The Transfer of Property Act of 1882 deals with transfers of property, but, save as provided by section 57 and Chapter IV, does not affect transfers by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction, and nothing contained in the second chapter of that Act affects any rule of Hindu, Mahommedan or Buddhist law. The chapters and sections relating to contracts are to be taken as part of the Indian Contract Act as those which relate to registration are to be read as supplemental to the Registration Act of 1908. The Act after first dealing with the general principles relating to the transfer of property, whether movable or immovable, by act of parties, treats in particular of sales of immovable property, [23] mortgages of, and

---

12. *See* Act IX of 1872, Ch. VII.
13. *Ib.*, Ch. VIII.
14. *Ib.*, Ch. IX.
15. *Ib.*, Ch. X.
16. *Ib.*, Ch. XI (now repealed by the Indian Partnership Act, 1932).
17. Act 1 of 1956.
18. *See* Acts 45 of 1974 (Interest) ; XIV of 1870 (Usury) ; IX of 1856 (Bills of Lading) ; Merchant Shipping Act, 1958 (Act 44 of 1958) ; as to criminal breaches of contract see Penal Code, Ch. XIX) ; III of 1865 (Common Carriers).
19. *e.g.*, pre-emption, maritime law as to bottomry, salvage, etc. ; attorney's lien (In the matter of *McKorkindale*, 6 C., 1 (1880) ; rules of Hindu law not affected by the Contract or other Act. *Nobin Chunder Banerjee* v. *Romesh Chunder Ghose*, 14 C., 781 (1887), the common law relating to carriers. *Mothoora Kant Shaw* v. *The India General Steam Navigation Company*, 10 C., 166 (1883) ; *The Irrawaddy Flotilla Co.* v. *Bhugwan Das*, 18 C., 620 (1891) ; customs and usages regarding negotiable instruments, etc.
20. Such as insurance, shipping and carriers' contracts, negotiable instruments and others. See as to subsequent Acts, XXVI of 1881 (Negotiable Instruments), and others.
21. v. *post*.
22. *Greenwood & Co.* v. *Holquette*, 12 B. L. R., 42, 46 (1873) ; s. c. 20, W. R., 467. Thus in India there is no Statute of Frauds affecting questions of contract and no distinction as to proof of consideration between contracts under real and simple contracts.
23. Act IV of 1882, Ch. III.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

charges upon immovable property, [24] leases, [25] exchanges, [26] gifts, [27] and transfer of *choses-in-action* or actionable claims. [28]

The Indian Trusts Act [29] with some exceptions contains substantially the same as that of the English law based on "justice, equity and good conscience." Nothing however in the Act contained affects the rules of Mahommedan law as to *wakf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private, religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors. Portions of the law relating to trusts are also contained in the Specific Relief Act, [30] the Code of Civil Procedure, [31] the Limitation Act, [32] the Official Trustees Act, [33] Religious Endowments Act, [34] the Religious Societies Act, [35], the Penal Code [36] and the charitable and Religious Trusts Act, 1920 (XIV of 1920).

(ii) **And the relief applicable in respect thereof.**—The ordinary remedy for the breach of any contract is the grant of compensation for any loss or damage caused by such breach. [37] A person who rightfully rescinds a contract is also entitled to compensation. [38] The extraordinary remedies available are Specific Performance, [39] Rectification, [40] Rescission, [41] Cancellation, [42] Appointment of Receiver, [43] and Injunction. [44] Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to or in substitution for, such performance. If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and

---

24. *Ib.*, Ch. IV. No provision is made in this Act or in the Contract Act with regard to mortgages or hypothecations of movable property, and there is no enactment in this country analogous to the English Bills of Sale Acts.
25. *Ib.*, Ch. V.
26. *Ib.*, Ch. VI.
27. *Ib.*, Ch. VII. This chapter saves *donationes mortis causâ* (as to which see rules of Mahommedan law).
28. *Ib.*, Ch. VIII
29. Act II of 1882.
30. Act 47 of 1963 ss. 2, 34, 35, 41 (h).
31. Act V of 1908 as amended by Act 104 of 1976.
32. Act XXXVI of 1963.
33. Act II of 1913.
34. Act XX of 1863.
35. Act I of 1880..
36. Ss. 405—407.
37. Act IX of 1872, ss. 73, 74.
38. *Ib.*, s. 75.
39. Act 47 of 1963, Ch. II.
40. *Ib.*, Ch. III.
41. *Ib.*, Ch. IV.
42. *Ib.*, Ch. V.
43. Civ. Pr. Code, *O.* 40.
44. Act 47 of 1963, Chapters VII and VIII; Civ. Pr. Code, *O.* 39 as amended by Act 104 of 1976.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.[45] Compensation awarded under the section now cited may be assessed in such manner as the Court may direct. The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.[46] The dismissal of a suit for specific performance of a contract or part thereof will bar the plaintiff's right to sue for compensation for the breach of such contract or part as the case may be.[47] Liquidation of damages is not a bar to specific performance.[48]

Similarly in the case of agreements to transfer property the remedy lies either in damages or specific performance. Instruments of transfer may also be rectified or cancelled, and protection may be given to rights of property by the appointment of a Receiver or the issue of an Injunction. A person entitled to the possession of specific property, movable or immovable, may sue to recover the same,[49] and any person entitled to any right as to any property may institute a suit to obtain a decree declaratory of such right.[50] In the case of mortgages the mortgagor may sue for redemption and the mortgagee for sale or foreclosure.[51]

In the case of trusts a trustee who commits a breach of trust is liable to make good the loss which the trust-property or the beneficiary has thereby sustained.[52] The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such and restrained by Injunction from committing any contemplated or probable breach of trust.[53] He may follow the trust-property,[54] and institute a suit for a declaration of his right,[55] and the trustee, if dispossessed of the trust-property, may sue to recover the same.[56] The Court will also in proper cases dispossess a trustee of the trust-estate by appointing a Receiver of the trust-property.[57]

Of the above mentioned forms of relief only those by Injunction and Receiver are directly dealt with in the following pages, though incidental reference is also made to relief by Specific Performance, since the rules touching

---

45. Act 47 of 1963, s. 21.
46. *Ib.*
47. *Ib.*, s. 24.
48. *Ib.*, s. 23.
49. *Ib.*, Part II, Ch. I.
50. Act 47 of 1963, Ch. VI.
51. Act IV of 1882, Ch. IV as to sales and exchanges, *ib.*, Ch. III, s. 120 ; Leases, Ch. IV ; Gifts, Ch. VII ; Transfer of Actionable Claims Ch. VIII.
52. Act II of 1882, ss. 23—30, 33 ; as to liability of beneficiary joining in breach of trust, *ib.*, s. 68.
53. Act II of 1882, s. 61. Act 47 of 1963, ss. 38(3)(a), 11(1), [Specific Performance], Chapter II; Civ. Pr. Code, *O.* 39, as amended by Act 104 of 1976.
54. Act II of 1882, ss. 63, 64 *et seq.*, s. 96 and Ch. VI *passim*. *See* Act XXXVI of 1963 (Limitation), s. 10.
55. Act 47 of 1963, s. 34.
56. *Ib.*, Part II, Ch. I ; see further as to the rights and powers of trustees, Act II of 1882, ss. 31—45.
57. Civ. Pr. Code, *O.* 40, as to suits relating to public charities, see Civ. Pr. Code, s. 92, as amended by Act 104 of 1976.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

this remedy govern also the issue of Injunctions in cases of breach of contract. [58]

Injunctions in respect of torts to property other than breaches of trust are dealt with in subsequent Chapters.

53. Relief by Injunction.—The Court will often interfere by Injunction to prevent the violation of contracts and to compel parties to perform their covenants and agreements. In the case of the breach of an obligation arising from contract or trust, an Injunction, temporary or perpetual, mandatory or otherwise, may be granted.

(i) Temporary.—In any suit for restraining the defendant from committing a breach of contract or other injury of any kind (such as a breach of trust) whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary Injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. The Court may by order grant such Injunction on such terms as to the duration of the Injunction, keeping an account, giving security or otherwise as the Court thinks fit, or refuse the same. [59]

Where any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit or wronfgully sold in execution of a decree, the Court may by order grant a temporary Injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging or alienation as the Court thinks fit, until the disposal of the suit or until further order. [60] In case of disobedience or breach of the terms on which an Injunction is granted, the Court which granted it may enforce it or such terms by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property or both. But no such attachment shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto. [61]

The words of the Code will enable the Courts to cast their orders in a mandatory form, if the circumstances of the case so require it.

Arbitration Proceeding.—Under section 41(b) of the Arbitration Act, the Court has been given power to issue interim injunction but the court has got the power to pass an order of injunction only 'for the purpose of and in relation to arbitration proceedings' before the Court. It cannot be said that as clause (a) of Section 41 empowers the Court to pass interim injunction the Court can pass injunction even if the conditions of clause (b) of Section 41 were not satisfied. Such construction will render clause (b) of Section 41 otiose. Where a contract for sale with an arbitration clause contained stipulation that whenever any claim for the payment of a sum of money arises out of or under the contract against the contractor, the purchaser shall be entitled to recover such sum by

---

58. Act 47 of 1963, s. 38.
59. Civ. Pr. Code, *O.* 39, *r.* 2 as amended by Act 104 of 1976.
60. *Ib.*, *O.* 39, *r.* 1 as amended by Act 104 of 1976.
61. *Ib.*, *O.* 39, *r.* 2 see *Venkat Dharmaji Gontalwar* v. *Vishwanath*, A.I.R. 1983 Bom. 413.

CENTRAL LIBRARY

appropriating in whole or in part, any sum then due or which at any time thereafter may become due to the contractor under the contract or any other contract with the purchaser or the Government or any person contracting through the Secretary and on a notice withholding payment due to the contractor under some other contract in order to recover the damages occasioned by the risk purchase on the contractor's failure to supply them being given to the contractor an application under section 33 challenging the validity of the arbitration clause along with an application for injunction restraining the purchaser from withholding the payment under other contract was made, the injunction prayed for could not be granted, because the amount due under the other contract to the contractor-applicant was not the subject-matter of the proceedings under section 33 (*H. M. Kamaluddin Ansari & Co.* v. *Union of India & Ors.*, A.I.R. 1984 S.C. 29).

In a suit filed by the partnership firm against the Food Corporation of India & Anr. for a declaration that the contract between the parties for handling and transportation of goods was subsisting on the date of the suit and restraining the defendant from committing breach of the same by handing over the work to some one other than the plaintiff. In the suit an application was made for an interim injunction restraining the defendant from committing a breach of the contract and from interfering with the work of handling and transport of goods by the plaintiff during the pendency of the suit. On the notice of motion being taken out the Court directed notice of the same to be served and made it returnable on a particular date. On the returnable date the Advocate for the defendant prayed for time for reply and argument to the plaintiff's application for temporary injunction which Court granted. When the matter came up for hearing on the next day the defendant made an application for stay of the suit under section 34 of the Arbitration Act. The Court granted a stay of further proceeding of the suit. The matter went up before the Supreme Court and it was held that it should be clearly emphasised that contesting the application for interim injunction or for appointment of receiver or for interim relief by itself anything more could not constitute a step in the proceeding within the meaning of section 34 of the Arbitration Act. It was further held an application seeking time to file reply to an interim injunction application cannot be said to be a step in the proceeding as would display an unequivocal intention to proceed with the suit or would disclose that the defendants had acquiesced into the resolution of dispute by the Court or had abandoned the right under the Arbitration agreement (*Food Corporation of India* v. *Yadav Engineer & Contractor*, A.I.R. 1982 S.C. 1302). No application for temporary injunction under Or. 39, r. 2, C. P. C. is maintainable in arbitration proceeding pending before the arbitrator under s. 8 of the Arbitration Act, 1940.[62] But the Calcutta High Court in *Maheswari & Co. (Pvt.) Ltd.* v. *Corporation of Calcutta*[63] it has been held that the court has power to pass an order for interim protection under s. 41 of the Arbitration Act, 1940 even where no application under s. 20 or where no proceedings under Chapter III of the Arbitration Act are pending.

(ii) Perpetual.—Subject to the other provisions contained in or referred to by Chapter X of the Specific Relief Act, a perpetual Injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether

---

62. *Abdul Rahman* v. *Abdul Khalil*, 1983 A.L.J. 761.
63. A.I.R. 1975 Cal. 168.

CENTRAL LIBRARY

expressly or by implication. When such obligation arises from contract the Courts are required to guide themselves by the rules and provisions contained in Chapter II of the Act relating to the subject of specific performance.[64] The contract may be expressed or it may be implied. Of the illustrations to section 54 of the Specific Relief Act dealing with the issue of perpetual Injunctions, Illustrations (*a*), (*j*), (*k*), (*l*), are purely cases of contract.[65] Provision is also made for the issue of an Injunction in the case of a breach of trust. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual Injunction where the defendant is trustee of the property for the plaintiff.[66] Of the illustrations to the abovementioned section those lettered (*b*)—(*i*) are examples of breaches of duty arising out of contract or trust, being breaches of trust of other fiduciary relation.[67]

A perpetual Injunction being in substance a decree, such an Injunction in the case of contract or trust should be enforced by the execution of the decree by which it is given.[68]

(iii) Mandatory.—When, to prevent the breach of an obligation arising from contract, trust, or otherwise, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may, in its discretion, grant a perpetual Injunction to prevent the breach complained of, and also to compel performance of the requisite acts.[69] And where an Injunction compelling performance is disobeyed, the Court has power to direct that the act shall be done by some one appointed by the Court and at the expense of the judgment-debtor.[70] The Court may also, if the circumstances so require it, grant a temporary Injunction in the mandatory form.[71] The mode of enforcement of a mandatory Injunction depends upon its nature as being either temporary or perpetual. A mandatory Injunction may be granted to restrain a breach of contract, if the circumstances warrant its issue. But there must have been no acquiescence and the consequences of the breach of the agreement must be such as cannot adequately be compensated by damages.[72]

So where the plaintiff and the defendant, being owners respectively of two adjoining houses and the verandahs immediately in front of those houses, agreed that they should keep the verandahs open and not build upon them or divide them by a wall : It was *held* that the mere fact that the defendant, when re-building his house, built its new front wall in advance of the plaintiff's, thus encroaching on the defendant's own verandah in breach of the agreement, was not sufficient in

---

64. Act 47 of 1963, s. 38 ; see Kerr, *Inj.*, 495. The rule, however, there referred to, that a breach of covenant is in itself apart from damage a ground for Injunction, seems not to be law in this country; v. *post*.

65. Collett, *op. cit.*, 278 ; Nelson, *op. cit.*, 281.

66. Act 47 of 1963, s. 38(3)(a).

67. Collett, *op. cit.*, 278 ; Nelson, *op. cit.*, 281. See, Sarkar's *Specific Relief Act* (13th ed.), Ch. VIII.

68. *Jawatri* v. *H. A. Emile*, 13 A., 98 (1890).

69. Act 47 of 1963, s. 39.

70. *O.* 21, *r.* 32 cl. (5).

71. Civ. Pr. Code, *O.* 39, *rr.* 1, 2 as amended by Act 104 of 1976 by which the form of the order of Injunction is left to the discretion of the Court.

72. *Ranchhod Jamnadas* v. *Lallu Haribhai*, 10 Bom. H. C. R., 95 (1873).

CENTRAL LIBRARY

itself to justify the Court in granting a mandatory Injunction ordering its removal ; it should also be satisfied that the new wall so materially interfered with the comfort and convenience of the plaintiff, that the consequences of the breach of agreement could not adequately be compensated by damages ; it should also satisfy itself whether the plaintiff protested against the new wall being built, whilst in course of erection, or quietly acquiesced in what the defendant was doing, and only objected when the wall was completed ; in the latter case, the Court should only award damages. [73]

A mandatory Injunction may also be granted in the case of breaches of trust or other fiduciary relation. [74] If a person, being the medical adviser of another, threaten to publish the latter's written communications with him, showing that he has led an immoral life, the latter may obtain an Injunction to restrain the publication ; [75] and the Court may also order the communication to be given up or destroyed. [76]

54. Relief by damages.—The Court may, when it is satisfied that such a course will be justified by the circumstances of the case, instead of granting an Injunction, substitute damages therefor. [77] But a person may by acquiescence in a breach of covenant not only deprive himself of his right to an Injunction, but also of his right to recover damages. [78]

55. Conditions upon which Injunctions in cases of contract will be granted.—Certain common conditions are essential to the grant of relief in respect of obligations arising from contract, *viz.*,—(*a*), the Court must be one of competent *jurisdiction* to grant the relief prayed ; (*b*) the agreement must constitute a *contract* ; (*c*) such contract must not be one the performance of which would not be *specifically* enforced ; and (*d*) the grant of relief must not affect the operation of the Indian Registration Act.

(i) Jurisdiction.—In India the power to make orders *in personam*, though the subject- matter of the suit is without the Jurisdiction, is determined in the case of the High Courts by their respective Letters Patent,[179] and in the case of other Civil Courts, by the Civil Procedure Code. [80] Suits respecting immovable property must in general be instituted where the subject-matter is situate ; in other cases the jurisdiction is determined by the place of origin of the cause of action or residence of the defendant. [81] It is doubtful whether the Courts in this country are empowered to entertain suits for specific performance of contracts relating to

---

73. *Ranchhod Jamnadas* v. *Lallu Haribhai*, 10 Bom. H. C. R., 95 (1873). *See* also Mandatory Injunctions, Kerr, *Inj.*, 495.

74. See, *Nandalal* v. *Provudayal*, A.I.R. 1952 Cal. 74 ; *Madho Singh* v. *Abdul Qaiyum Khan*, A.I.R. 1950 All. 505 ; *Mathu Singh* v. *Sanwalla*, A.I.R. 1971 Raj. 241.

75. Act I of 1877, s. 55, illus. (*f*) (see s. 39 of Act 47 of 1963 which has omitted the illustrations.).

76. *Ib.*, illus. (*g*).

77. *See Leader* v. *Moody*, 20 Eq., 154 and *ante*, p. 119.

78. *Kelsey*. v. *Dodd*, 52 L. J. Ch., 34.

79. Letters Patent, 1865 (Calcutta), cl. 12.

80. Civ. Pr. Code, ss. 16, 18. See Sarkar on *Civil Procedure* (7th ed.).

81. *Ib.*, s. 17 ; Letters Patent, 1865, cl. 12.

CENTRAL LIBRARY

land which is situate without the jurisdiction.[82] But it has been held that the High Court has jurisdiction concerning land provided *a portion* of such land is within its jurisdiction and that it is not then necessary that the cause of action should have arisen within the local limits or should specially refer to such portion.[83] In one case[84] it was pointed out that there is a distinction between a vendor's suit for specific performance as to which the Court has jurisdiction and a purchaser's suit as to which a Court may not have jurisdiction.[85] In the matter of Injunctions, suits under the Civil Procedure Code to obtain relief respecting immobable property situate in British India held by or on behalf of the defendant,[86] may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within whose jurisdiction the property is situate or in the Court within whose jurisdiction the defendant resides or carries on business or personally works for gain.[87] Similarly it has been held under the High Court Charter that where the suit is exclusively directed *in personam*, and the person against whom relief is sought is within and subject to the jurisdiction, the Court will have jurisdiction to grant an Injunction.[88] In cases, therefore, other than those substantially falling within the scope of suits respecting immovable property or suits "for land," the Court will have jurisdiction to grant an Injunction, if the cause of action has wholly or in part arisen or the defendant or each of the defendants where there are more than one resides, carries on business or works for gain within the jurisdiction. But if there are more defendants than one and any reside or carry on business or work for gain within the jurisdiction while others do not, there will be no jurisdiction unless the Court grants leave to the former for institution of the suit or the latter acquiesce in it.[89]

A suit for land is a question which it is submitted has not been finally and authoritatively decided by the Supreme Court of India. The last decision appears to be the decision in *Moolji Jaitha & Co.* v. *Khandesh Spinning & Weaving Mills Co. Ltd.*, A.I.R. 1950 F.C. 83 where the Five Judges Bench was divided in their views and it appears that the two of the Learned Judges view is that a suit for land when the Court could act *in personam* and compel the defendants to fulfil their fiduciary personal obligation to hold the properties for the benefit of the

---

82. In *Ramdhone Shaw* v. *Sreemutty Nobumoney Dossee*, Bourke, 218 (1865) : *H. H. Holkar* v. *Dadabhai*, 14 B., 253 (1890), the Court was held to have, and in *Sreenath Roy* v. *Cally Doss Ghose*, 5 C., 82 (1879), not to have jurisdiction.

83. *Ganoda Sundary Choudhurani* v. *Nalini Ranjan Raha*, 36 C., 28 (1908).

84. *Land Mortgage Bank* v. *Suduruddin Ahmed*, 19 C., 358, 366 (1892).

85. On the basis of the classification suggested it would appear that a vendor's suit will lie (19 C., 358) ; that a purchaser's suit will lie in Bombay (14 B., 353), but it is doubtful whether that be so in Calcutta since it has been held both that such a suit will (Bourke, 218) and will not (5 C., 82) lie The decision in the last case appears to have been *obiter*, and the decision (19 C., 353) did not decide the point. The English Courts have jurisdiction in either case. Story, *Eq., Jur.*, §§ 743, 744 ; see *Keshav* v. *Vinayak*, 23 B., 22, 31 (1897).

86. *Crisp* v. *Watson*, 20 C., 689 (1893).

87. Civ. Pr. Code, s. 16.

88. *Rajmohan Bose* v. *East Indian Railway Co.*, 10 B. L. R., 241 (1872).

89. Civ. Pr. Code, s. 20 ; Woodroffe & Ameer Ali, Civ. Pr. Code, pp. 166, 168 ; Sarkar on *Civil Procedure* (7th ed) p. 79. Letters Patent, 1865, cl. 12.

CENTRAL LIBRARY

plaintiffs and to execute the necessary instrument conveying to them the legal title to those properties and obligation arising out of the fiduciary relation between the parties and the circumstances relating to the acquisition of the properties as alleged in the plaint. The defendants resided and carried on business in Bombay and were thus amenable to the jurisdiction of the High Court and that Court could act in personam and compel the defendants to fulfil their obligation. It was held that the Court has jurisdiction to entertain the same as some of the defendants resided within the jurisdiction of the Bombay High Court. Whereas other two Learned Judges held that the said suit was a suit for land and the High Court has no jurisdiction to entertain it as the lands were situated outside the limits of the original side jurisdiction of the Bombay High Court. The remaining Learned Judge was of the view that suit for land or other immovable property in clause 12 besides obviously covering claim for recovery of possession or control of land are apt to connote also suits which primarily and substantially seek an adjudication upon title to immovable property or a determination of any right or interest therein. So it is submitted that there is great divergence of views as to what is a suit for land unless the same is authoratively settled by the highest Court in India. It will depend on the Court concerned to follow the view which they prefer.

(ii) The agreement must constitute a contract—The agreement in respect of which relief by Specific Performance of Injunction is sought must constitute a *contract*, that is [90] an agreement enforceable by law ; for by the terms of the Specific Relief Act nothing in that Act shall be deemed (unless otherwise expressly enacted therein), to give any right to relief in respect of any agreement which is not a contract. Every promise and every set of promises forming the consideration for each other is an *agreement*.[91] And all agreements are *contracts* if they are made by the free consent [92] of parties competent to contract, [93] for a lawful consideration and with a lawful object, [94] and are not by the Contract Act expressly declared to be void.[95]

The effect of the failure of one or other of the conditions last mentioned is either to render the agreement *void*, that is, [96] not enforceable by law, and therefore [97] not a contract, or to render it *voidable*, that is, [98] enforceable by law

---

90. Act IX of 1872 (Contract), s. 2 (*h*).

91. Act IX of 1872, s. 2 (*e*) and as to the definition of 'promise', 'promisor', 'promisee,' see *ib.*, s. 2, cls. (*b*), (*c*), and of 'consideration' see *ib.*, s. 2, cl. (*d*). Promises which form the consideration or part of the consideration for each other are called reciprocal promises, *ib.*, cl. (*f*).

92. v. *ib.*, ss. 13—18.

93. v. *ib.*, s. 11. Every person is competent to contract, who is of the age of majority (see Act IX of 1875 and who is of sound mind (see Contract Act, s. 12), and who is not disqualified from contracting by any law to which he is subject (*ib.*, s. 11). Every person competent to contract and entitled to or authorized to dispose of transferable property is competent to transfer that property. (Act IV of 1882, s. 7.)

94. v. *ib.*, ss. 23, 25, expl. (2).

95. *Ib.*, s. 10, and see as to *void* agreements, *ib.*, ss. 24—30.

96. Act IX of 1872, s. 2 (*g*).

97. *Ib.*, s. 2 (*h*).

98. *Ib.*, s. 2 (*i*).

CENTRAL LIBRARY

at the option of one or more of the parties thereto, but not at the option of the other or others, and an agreement of this kind is a voidable contract.

(a) Void agreement.—The Specific Relief Act excludes from its operation all void agreements. and therefore no Injunction will be granted in respect of such an agreement. Every agreement of which the object or consideration is unlawful is void ; [99] as where the consideration or object of an agreement is forbidden by law, or is of such a nature that, if permitted, it would defeat the provision of any law ; or is fraudulent or involves or implies injury to the person or property of another ; or the Court regards it as immoral or opposed to public policy. [1] And except in the three instances specified by the Contract Act an agreement made without consideration is void. [2] So too an agreement in restraint of the marriage of any person, other than a minor is void. [3] And, saving three specified exceptions, an agreement in restraint of trade is void ; [4] as also, saving two exceptions, an agreement in restraint of legal proceedings. [5] Further, agreements, the meaning of which is not certain, or capable of being made certain, [6] and agreements by way of wager are void. [7] Lastly, where both the parties to an agreement are under a mistake as to a matter of *fact* essential to the agreement, the agreement is void. [8]

Thus when an Act has declared an association to be illegal, no rights can be acquired by any of its members which are founded upon that which is so declared to be illegal nor will the Court take notice of their agreement for the purpose of establishing a right in a Court of law. [9] An association of artizans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill, is an association that has for its object the acquisition of gain and, if consisting of more than twenty persons, must be registered. When more than twenty artizans signed an agreement whereby they constituted themselves an association for the above purpose, but which association was not registered as a company under the provisions of section 4 of Act X of 1866 (Trading Companies), [10] it was held that the Court could not grant an Injunction to restrain the breach of such agreement. [11] In this case there was a partnership, or at any rate, an association, for the purpose of carrying on a business that had for its object the acquisition of gain, and consisting of more than twenty persons, and being unregistered, it was an illegal association. There-

---

99. Act IX of 1872 (Contract), s. 23.

1. *Ib.*, an agreement is void if the consideration or object is unlawful in part, *ib.*, s. 24.

2. *Ib.*, s. 25.

3. *See* Act IX of 1872, s. 26.

4. *Ib.*, s. 27 ; v. *post*.

5. *Ib.*, s. 28.

6. *Ib.*, s. 29.

7. *Ib.*, s. 30.

8. *Ib.*, s. 20, and see *ib.*, ss. 21, 22.

9. *Harris* v. *Amery*, L. R., 1 C. P., 148, cited and followed in *Bhikaji Sabaji* v. *Bapa Saju*, 1 B., 550, 554 (1877).

10. Repealed by Act VI of 1882 ; now see Act I of 1956.

11. *Bhikaji Sabaji* v. *Bapa Saju*, 1 B., 550 (1877).

CENTRAL LIBRARY

fere none of the parties acquired any rights under their agreement which could be enforced in a Court of law.

(b) Voidable agreements.—Though the Specific Relief Act excludes from its operation void agreements, it does not so exclude voidable agreements, for such are contracts, being enforceable by law, though at the option of some or one of the parties only ;[12] such as agreements made without free consent, being induced by coercion, undue influence, fraud, or misrepresentation ;[13] contracts as to which one of the parties thereto has refused to perform his promise wholly ;[14] or has prevented the other from performing his promise ;[15] or has failed to perform his part at a fixed time when time is of the essence of the contract.[16] The subject-matter of Injunctions therefore in the case of obligations arising out of contract are agreements bilaterally binding and voidable agreements which the parties who have the power to avoid them have elected to make binding. The distinction between a void and a voidable agreement is that that which is void has never had any legal existence and can therefore never be confirmed ; while that which is voidable is valid as long as it is not impeached by the party who has it in his power to avoid it.[17] But, though valid, a contract so long as it *is* voidable cannot be specifically enforced.[18] In the event of a person electing to treat the contract as a binding one he may sue for its specific performance, and may also ask for compensation for its breach, either in addition to, or in substitution for, such performance,[19] or if he so chooses may sue for damages only.[20] And if the person at whose instance the contract is voidable has elected to ratify it, and to treat it as binding upon himself, a suit for specific performance and Injunction may lie against him in respect of such contract. But as a minor cannot elect to ratify a contract so as to be bound by the ratification no decree for specific performance can be made against him ;[21] and it would follow therefore that an Injunction cannot be granted to prevent the breach of a contract entered into by a minor.[22]

(iii) Such contract must not be one, the performance of which would not be specifically enforced.—The agreement in respect of the breach of which an Injunction is sought must not only constitute a contract, but such contract must not be one which, though of an affirmative character, is incapable of specific

---

12. *See* Act IX of 1872, s. 2 (*h*), (*i*).
13. *Ib.*, s. 19.
14. *Ib.*, s. 39.
15. *Ib.*, s. 53.
16. *Ib.*, s. 55.
17. *Chesterfield* v. *Janseen*, 1 White and Tudor's L. C. ; *Oakes* v. *Turquand*, L. R., 2 H. L., 375.
18. *Jugal Kishori Chowdhurani* v. *Anunda Lall Chowdhuri*, 22 C., 545, 550 (1895).
19. *See* Act 47 of 1963, s. 21.
20. *Ib.*, s. 3(a).
21. *Jugal Kishori Chowdhurani* v. *Anunda Lall Chowdhuri*, 22 Cal. 545, 549, 550 (1895) ; and in *Flight* v. *Bolland*, 4 Russ., 278, it was held that an infant could not maintain a suit for a specific performance, the remedy not being mutual, cited *ib.*, 549 ; and if the contract be entered into by a guardian it must be shown that it was for the infant's benefit, *ib.*
22. *See* Act 47 of 1963, s. 41(e).

CENTRAL LIBRARY

performance. When an Injunction is sought in respect of an obligation arising from contract, the Court is to be guided by the rules and provisions contained in the Specific Relief Act relating to Specific Performance.[23] It follows as a necessary deduction from this rule that an Injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced.[24] When Specific Performance will not be granted, the Court will not grant an Injunction in aid of the contract, for, while damages are the proper and available remedy, such an Injunction might practically effect the same results as a decree for Specific Performance.

(a) Contracts which cannot be specifically enforced.—The following contracts cannot be specifically enforced, and therefore an Injunction cannot be granted in respect of their breach :—

(*a*) A contract for the non-performance of which *compensation in money is an adequate relief.*[25] The grant of specific relief being dependent upon the inadequacy of the ordinary legal remedy, Specific Performance and Injunction will in all cases be refused where the breach of contract is satisfied by the mere payment of money.[26] So specific performance will not be enforced of a contract for the transfer of stock in the public funds, though the rule is otherwise in the case of shares in private Companies.[27] Thus if *A* contracts to sell, and *B* contracts to buy, a lakh of rupees in the four per cent loan of the Government of India, the contract cannot be specifically enforced.[28] So the Court for the most part refuses to interfere in respect of chattels :[29] and *primâ facie* the breach of any purely mercantile contract is capable of being adequately relieved by damages.[30] Thus if *A* contracts to sell, and *B* contracts to buy, 40 chests of indigo at Rs. 1,000 per chest, the contract cannot be specifically enforced :[31] nor will the Court enforce contracts to make or accept a loan of money, though where the money has been actually advanced the Court will specifically enforce a contract to execute a mortgage.[32] So if in consideration of certain property having been

---

23. *Ib.*, s. 38.

24 *Ib.*, s. 41(e), as to the exception contained in s. 57, v. *post.* See High, *Inj.*, § 1162 ; Joyce's *Doctrines*, 204. So an injunction will not be granted against the sale of goods or any chattels where specific performance of a contract for their sale cannot be enforced, *ib.* ; *Fothergill* v. *Rowland*, 22 W. R., (Eng.), 42 and see *Ram Charan Bajpai* v. *Rakhal Das Mukherji*, 41 C., 19 (1914).

25. Act 47 of 1963, s. 14(1)(a).

26. Fry on *Specific Performance*, §§ 66—71 ; and see *Maya Ram* v. *Prag Dat*, 5 A., 44, 51 (1882) ; *Ryan* v. *Mutual Tontine Westminister Chambers Association*, L. R., 1893, 1 Ch., 116 ; *Ranchhod Jamnadas* v. *Lalla Haribhai*, 10 Bom. H. C. R., 95 (1873) ; In the matter of *Ganput Narain Singh.*, 1 C., 74, 76 (1875) ; *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5, 7 (1881) ; *Callianji Harjivan* v. *Narsi Tricum*, 19 B., 764, 769, 770 (1895) ; *aliter* if a money payment is insufficient, *Madras Railway Co.* v. *Rust*, 14 M., 18, 22 (1899). In re *Parkin Hill* v. *Schwarz*, L. R., (1892), 3 Ch., 510.

27. Fry, *op cit.*, §§ 73, 76.

28. Act 47 of 1963, s. 14(1)(a), cl. (a).

29. Fry, *op. cit.*, § 78 ; as to unique chattels, see s. 10, Act 47 of 1963.

30. *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5, 7 (1881).

31. Act 47 of 1963, s. 14.

32. Fry, *op. cit.*, § 54.

CENTRAL LIBRARY

transferred by *A* to *B*, *B* contracts to open a credit in *A's* favour to the extent of Rs. 10,000, and to honour *A's* drafts to that amount, the contract cannot be specifically enforced. [33] In the first and second of the above illustrations both *A* and *B*, and in the third *A*, would be reimbursed by compensation in money.

(*b*) A contract which runs into such *minute or numerous details*, or which is so dependent on the *personal qualifications of volition of the parties* or *otherwise* from its nature is such that the Court cannot enforce Specific Performance of its material terms. [34]

"The terms of this clause are very wide, and the number of Illustrations show how varied are the circumstances which render it practically impossible for the Courts to specifically enforce contracts. Though the clause mentions two special reasons, yet the inability of the Court to enforce Specific Performance is not limited to these two special grounds, for the clause goes on to speak of a contract which *otherwise from its nature is such* that the Court cannot enforce Specific Performance of its material terms. The whole question is a *practical* one, and it is obviously impossible, in the face of the enormous diversity of facts and circumstances about and under which contracts take place, to lay down a rigid rule which can embrace all possible contingencies. No doubt the Courts could, at a great expenditure of time and money, specifically enforce nearly every contract, but such a course is neither necessary, for there is always pecuniary compensation available for the injured party, nor would it in many cases be desirable on the ground of public policy. The line must be drawn somewhere, and it is drawn at *practical* impossibility, and whether this exists or not must be judged on the facts and circumstances of each case, as it arises." [35] The reason for refusal of specific relief is thus the practical incapacity of a Court to execute in such cases a decree for Specific Performance. Thus *A* contracts to render personal service to *B* ; or *A* contracts to employ *B* on personal service : or *A*, an author, contracts with *B*, a publisher, to complete a literary work. *A* contracts with *B* that, in consideration of Rs. 1,000 to be paid to him by *B*, he will paint a picture for *B*. *A* contracts to marry *B*. *A* contracts to buy *B's* business at the amount of a valuation to be made by two valuers, one to be named by *A* and the other by *B*. *A* and *B* each name a valuer, but before the valuation is made *A* instructs his valuer not to proceed, [36] The abovementioned contracts cannot be specifically enforced as they are all dependent upon the personal qualifications or volition of the parties. The Courts will not enforce contracts of hiring and service, and agency, for the enforced performance of such a contract would be worse than its non-performance, [37] nor will an Injunction be granted in the abovementioned cases. So an Injunction will not be granted in respect of a breach of promise

---

33. Act 47 of 1963, s. 14.
34. Act 47 of 1963, s. 14.
35. Nelson's *Specific Relief Act*, p. 165. See Sarkar's *Specific Relief Act* (13th ed), p. 122.
36. See *Vickers* v. *Vickers*, L. R., 4 Eq., 529, Fry, *op cit.*, §§ 361, 364.
37. Fry, *op. cit.*, §§ 110—115, Illustrations (3) and (8) apply the same principle to professional contracts made by authors and artists. *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B., 266 (1881) ; *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702 (1894), s. c. in appeal, 19 B., 764 (1895) ; *Krishna* v. *Anjaneyulu*, A.I.R. 1954 Mad. 113.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

to give in marriage : [38] or to compel a person to retain another in his employ in the confidential position of an agent ; [39] and in such a case the Court will not restrain a defendant from doing that which is only a violation of what is ancillary to, or incidental to, the principal part of the contract. [40] Again, a contract will not be enforced which runs into such minute or numerous details, or otherwise from its nature is such, that the Court cannot enforce Specific Performance of its material terms. By a charter-party entered into in Calcutta between *A*, the owner of a ship, and *B*, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid one-third on arrival at Rangoon, and two thirds on delivery of the cargo in London. *A* lets land to *B* and *B* contracts to cultivate it in a particular manner for three years next after the date of the lease. [41] *A* and *B* contract that in consideration of annual advances to be made by *A*, *B* will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to *A* when cut and ready for delivery. *A* contracts to supply *B* with all the goods of a certain class which *B* may require. *A* contracts with *B* to take from *B* a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated." [42] A contracts with *B* to execute certain works which the Court cannot superintend. [43] None of these or other similar contracts [44] can be specifically enforced : nor can an Injunction be granted in respect of their breach.

Under s. 14 (1)(b) of the Specific Relief Act, 1963 a contract running into minute details cannot be specifically enforced. This can be discussed under the following heads :

(1) Personal service : Where there is a purported termination of a contract of service, a declaration that the contract of service still subsists cannot be made. [45] The only remedy in such a case is to sue for damages. [46] A contract of personal service cannot be enforced against a school board or a University or District Board. [47] But where an employee of a statutory body is dismissed in contravention of statutory rules and regulations, he has a right of declaration that he continues in service. [48] In *Vaish Degree College* v. *Lakshmi Narain* [49] it has been held by the Supreme Court that a contract of personal service cannot ordinarily be enforced and a court normally would not give a declaration that the

---

38. In the matter of *Gunput Narain Singh*, 1 C., 74, 76 (1875); *Umed Kika* v. *Nagindas*, 7 Bom. H. C. R., O. C. J., 122 (1870) ; *Khimji* v. *Pursottamdas*, A.I.R. 1941 Bom. 129.

39. *Nusserwanji Merwanji Panday* v. *Gordon*, supra ; Kerr, *Inj.*, 432.

40. *Ib.*

41. See *Rayner* v. *Stone*, 2 Eden, 128.

42. See *Taylor* v. *Portington*, 7 DeG. M. & G., 328.

43. Act 47 of 1963, s. 14.

44. Fry. *op. cit.*, §§ 90—93.

45. *Bool Chand* v. *Kurukshetra University*, A.I.R. 1968 S.C. 292.

46. *Ram Piari* v. *Municipal Committee*, A.I.R. 1956 Punj. 220.

47. *Baidyanath* v. *Sudha*, 70 C.W.N. 571 ; *Dr. Dutt* v. *University of Delhi*, A.I.R. 1958 S.C. 1050 ; *R. S. Tewari* v. *District Board* ; A.I.R. 1964 S.C. 1680.

48. *Sukhdev Singh* v. *Bhagatram*, A.I.R. 1975 S.C. 1331.

49. A.I.R. 1976 S.C. 888.

CENTRAL LIBRARY

contract subsists after the removal from service of an employee against the will and consent of the employer. This rule is, however, subject to three well recognised exceptions :—(i) where a public servant is sought to be removed from service in contravention of the provisions of Art. 311 of the Constitution of India ; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law ; and (iii) where a statutory body acts in breach or violation of mandatory provisions of the statute.

(2) Sale of goodwill : In *Beswick* v. *Beswick* [50] it has been held that a contract for the sale of goodwill without business premises is specifically enforceable in a suit.

(3) Uncertainty of term in a contract : Where a covenant provides for renewal of a lease by mutual consent of parties on the basis of rent prevailing in the locality, the court has power to determine the rent in absence of mutual determination of such rent. [51]

(4) Volition of parties : A matter referred to arbitration is not one depending on volition of arbitrators. [52]

(5) Vague agreement : An agreement which is vague to the terms cannot be specifically enforced. [53]

(*c*) A contract the terms of which the Court cannot find with *reasonable certainty* cannot be enforced by Specific Performance or Injunction, it being necessary to ascertain what is the contract which is to be performed. [54] Thus, *A* the owner of a refreshment room, contracts with *B* to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. *A* refuses to perform his contract. The case is one for compensation and not for Specific Performance, the amount and nature of the accommodation and appliances being undefined. [55] It is not possible to lay down any general rule as to what is sufficient certainty in a contract ; but the certainty required must be a reasonable one having regard to the subject-matter of the contract and the circumstances under which and with regard to which it was entered into. [56]

(*d*) The same rule applies to a contract which is in its nature *revocable*. [57] The interference of the Court in such a case would be idle, inasmuch as what it had done might be instantly undone by one of the parties. [58] So where *A* and *B* contract to become partners in a certain business, the contract not specifying the

---

50. [1968] A.C. 58.

51. *Khivraj Chandra* v. *Esso Standard*, A.I.R. 1975 Mad. 374.

52. *Bari Mangu* v. *Bai Vijili*, A.I.R. 1967 Guj. 81. See also, *Abdul Satar* v. *Manilal*, A.I.R. 1970 Guj. 72 (The expression "volition of parties" refers to the parties to the agreement).

53. *Shree Ambarnoth Mills* v. *Custodian*, A.I.R. 1957 Bom. 119.

54. See Fry, *op. cit.*, § 380; Kerr, *Inj.*, 429.

55. See *Paris Chocolate Co.* v. *Crystal Palace Co.*, 3 Sm. and Giff., 119.

56. Fry, *op cit.*, §§ 380—386 ; see *New Beerbhoom Coal Co.* v. *Bularam Mahata*, 5 C., 932 (1880).

57. Act 47 of 1963, s. 14(1)(c).

58. Fry, *op. cit.*, § 94, *et seq.*

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

duration of the proposed partnership, this contract cannot be specifically performed, for if it were so performed, either *A* or *B* might at once dissolve the partnership. [59]

(*e*) No specific relief will be given in respect of a contract made by trustees either in excess of their powers or in breach of their trust. [60] Thus *A* is a trustee of land with power to lease it for seven years. He enters into a contract with *B* to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced. [61] So where the Directors of a company have power to sell the concern with the sanction of a general meeting of the share-holders, and they contract to sell it without any such sanction, this contract cannot be specifically enforced. [62] And if two trustees, *A* and *B*, empowered to sell trust-property worth a lakh of rupees, contract to sell it to *C* for Rs. 30,000, the contract being so disadvantageous as to be a breach of trust *C* cannot enforce its Specific Performance. [63] Again, the promoters of a company for working mines contract that the Company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and, in fact, agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase money. This contract cannot be specifically enforced. [64]

(*f*) Contracts which are *ultra vires* are void, and therefore a contract made by or on behalf of a Corporation or public Company created for special purposes, or by the promoters of such company, which is in excess of its power cannot be specifically enforced. So if a Company existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon, this contract cannot be specifically enforced. [65]

(*g*) The breach of a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date cannot be specifically relieved against. The Court refuses to order the performance of continuous acts on the ground that the Court cannot see to and enforce such performance. Thus *A* contracts to let for twenty-one years to *B* the right to use such part of a certain railway made by *A* as was upon *B's* land, and that *B* should have a right of running carriages over the whole line on certain terms and might require *A* to supply the necessary engine-power, and that *A* should during the term keep the whole railway in good repair. Specific Performance of this contract must be refused to *B*. [66]

---

59. Act 47 of 1963, s. 14(1)(c).

60. Act of 47 of 1963, s. 11(2) ; Fry, *op. cit.*, §§ 407—416 ; for definition of "trust" and "trustee" and "breach of trust," see Act II of 1882 dealing with private trusts ; as to the duties and powers of trustees, *ib.*, Chs. III, IV.

61. See *Harnet* v. *Yielding*, 2 Sch. and L. 549.

62. See *Daniel* v. *Adams*, Amb., 495.

63. See *Mortlock* v. *Buller*, 10 Ves., 292.

64. See *Emma Silver Mining Co.* v. *Grant*, 11 Ch. D., 918. A promoter is in fiduciary relations to the company which he promotes. *New Sombero Phosphate Co.* v. *Erlanger*, 5 Ch. D. 118.

65. Fry, *op. cit.*, §§ 487—495, 245, *et seq.*

66. See Fry, *op. cit.*, § 99 ; *Ryan* v. *Mutual Tontine Westminster Chambers Association*, (1893), 1 Ch. 116.

CENTRAL LIBRARY

(*h*) A contract of which a material part of the subject-matter supposed by both parties to exist, has, before it has been made, ceased to exist, cannot be specifically enforced. So if *A* contracts to pay an annuity to *B* for the lives of *C* and *D* and it turns out that, at the date of the contract *C*, though supposed by *A* and *B* to be alive, was dead, the contract cannot be specifically performed.[67]

And, save as provided by the Arbitration Act, 1940, no contract to refer a controversy to arbitration will be specifically enforced ; but if any person who has made such a contract, and has refused[68] to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract will bar the suit.[69] The contract the existence of which would bar a suit must be an operative contract, and not a contract broken up by the conduct of all the parties to it.[70] The wording of the section is wide enough to cover contracts to refer any matter which can legally be referred to arbitration, and one of such matters is a suit which is proceeding in Court.[71] The ground upon which this rule proceeds is that it is deemed to be against public policy to exclude from the appropriate judicial tribunals of the State any person who, in the ordinary course of things, have a right to sue there.[72] Upon the same principle agreements in restraint of legal proceedings are, saving certain contracts to refer to arbitration, void.[73] The Arbitration Act, 1940, however, provides for the carrying out of certain agreements to refer disputes to arbitration, and for the execution of an award already made under any agreement to refer to arbitration.[74] "But in each case this is done by moulding the matter into the form of a suit between the parties, and then dealing with it under the rules for arbitration or awards in the course of ordinary suits."[75]

Awards are, however, as regards Specific Performance placed on the same footing as contracts,[76] for an "award supposes an agreement between the parties and contains no more than the terms of that agreement ascertained by a third person."[77] The provision therefore of the Specific Relief Act relating to contracts apply, *mutatis mutandis*, to awards as well as to directions in a will or codicil to execute any particular settlement.[78] An Injunction may yet in certain cases be granted to restrain an arbitrator from acting and the parties from proceed-

---

67. Fry, *op. cit.*, § 900 *et seq.*, as to mistake, see Contract Act, s. 20.

68. It must be proved that there has been a refusal ; the mere filing of suit does not constitute such a refusal ; *Tahal* v. *Bisheshar*, 8 A., 57 (1885) ; *Koomud Chunder Dass* v. *Chander Kant Mookerjee*, 5 C., 498 (1879) ; but an application for leave to withdraw from the arbitration is evidence of such refusal, *Sheoambar* v. *Deodat*, 9 A., 168 (1886).

69. Act 47 of 1963, s. 14(2) ; See *Salig Ram* v. *Jhunna Kuar*, 4 A., 546 (1882).

70. *Tahal* v. *Bisheshar*, supra.

71. *Sheoambar* v. *Deodat*, 9 A., 168 (1886).

72. Story, *Eq. Jur.*, ss. 1457, 670 ; Fry, *op. cit.*, § 1600.

73. Act IX of 1872 (Contract), s. 28.

74. See Chs. II, III, IV.

75. Collett, *Specific Relief Act*, 118.

76. See *Raghubar Dial* v. *Madan Mohan Lal*, 16 A., 3 (1893). Fry, *op. cit.*, Ch., viii.

77. *Wood* v. *Griffith*, 1 Sw., 54, *per* Lord Eldon.

78. Act 47 of 1963, s. 25 ; see Fry, *op. cit.*, s. 1593 ; as to settlements, v. *post*.

CENTRAL LIBRARY

ing before him for an award under the agreement. [79] With regard to further rules governing the grant of Specific Performance or Injunction in cases of contract, v. *post* 60.

(b) No Injunction will be granted in respect of the breach of such contracts.—Where an agreement is of an affirmative character [80] the remedy, in a proper case, lies in Specific Performance, and an Injunction may also be granted both for the enforcement of negative terms, if any, and also in aid of or ancillary to the relief sought by way of Specific Performance of the contract. [81] If, however, an agreement, though of an affirmative character, is such that the Court would not under the rules abovementioned specifically enforce it, no Injunction will be issued to prevent the breach thereof. [82] In such a case the contract is an *ex-hypothesi* one, the breach of which will be properly relieved by the grant of damages, and no Injunction will issue where the remedy by compensation is both proper and available. Moreover, to issue an Injunction might be tantamount to specifically enforcing in fact an agreement, which was not so enforceable. It is obvious also that no Injunction can issue in aid of or ancillary to Specific Performance, where the latter relief cannot be granted.

(c) Except in certain cases of negative agreements coupled with affirmative agreements not specifically enforceable.—Notwithstanding the general rule that an Injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced, where a contract comprises an affirmative agreement to do a certain act coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel Specific Performance of the affirmative agreement, will not preclude it from granting an Injunction to perform the negative agreement ; provided that the applicant has not failed to perform the contract so far as it is binding on him. [83] As to these exceptional cases v. *post*.

(iv) The operation of the law relating to the registration of documents must not be affected.—Except where it is otherwise enacted, nothing in the Specific Relief Act shall be deemed to affect the operation of the Indian Registration Act (XVI of 1908) on documents. [34] That Act declares the registration of certain documents to be compulsory, such as instruments [85] of gift of immovable property ; certain other non-testamentary instruments dealing with immovable property ; leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent ; and authorities to adopt a son

---

79. *See* Kerr, *Inj.*, 531. As to injunctions in restraint of arbitration, see *Sadarmull* v. *Agarchand*, 23 C. W. N., 811 (1919) ; *Joylall* v. *Gopiram Bhotica*, 47 C., 611 (1920) ; 24 C. W. N., 612 ; 31 C. L. J., 167 ; *Baijnath* v. *Mansukari*, 23 C. W. N., 258 (1918) ; *Ramdas Khaitan & Co.* v. *Atlas Mills Co. Ltd.*, A.I.R. 1931 Bom. 151.

80. v. *post*.

81. v. *post*.

82. Act 47 of 1963, s. 41(e).

83. *Ib.*, s. 42.

84. Act 47 of 1963, s. 3 (b).

85. As to the meaning of the term "instrument" see *Somu Gurukkal* v. *Rangammal*, 7 Mad. H. C. R., 13 (1871).

CENTRAL LIBRARY

not conferred by will.[86] It further declares that no document which is required to be registered shall affect any immovable property comprised therein, or confer any power to adopt *or be received as evidence of any transaction affecting such property,*[87] *or conferring such power,* unless it has been registered in accordance with the provisions of this Act.[88] The words "or be received as evidence of any transaction affecting such property" mean "or be received as evidence of any transaction *so far as it affects* such property."[89] An unregistered document, the registration of which is compulsory, is admissible in evidence for a *collateral* purpose. So an unregistered bond, containing a personal undertaking to repay money borrowed, and also a hypothecation of land above Rs. 100 in value as security may be used in evidence to enforce the personal obligation.[90] The effect of the abovementioned words therefore is that documents, the registration of which is compulsory, although inadmissible, unless registered, as evidence of any transaction affecting immovable property or conferring a power to adopt will yet be admissible for other purposes.[91] Section 54, paragraphs 2 and 3, sections 50, 107 and 123 of the Transfer of Property Act (IV of 1882) are to be read as supplemental to the Indian Registration Act. The Transfer of Property Act requires the registration of certain sales,[92] mortgages,[93] leases,[94] and gifts.[95] Further a transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.[96] The effect of the combined Acts is that the registration of deeds of sale or of mortgage of immovable property of the value of Rs. 100 and upwards, of leases year by year or for a term exceeding a year, and of deeds of gift of immovable property of any value, is compulsory. Deeds of sale or mortgage of immovable property, of less than Rs. 100 in value, and deeds of gift of movable property, must also be registered, unless there is delivery of possession, when the transfer is effected without a deed.

---

86. Act XVI of 1908, s. 17 ; the registration of certain other documents is optional ; *ib.*, s. 18.

87. It may, however, be used in evidence in support of a claim for *movable* property ; *Thandavan* v. *Valliamma,* 15 M., 336 (1892) but see also *Lakshmamma* v. *Kameswara,* 13 M., 281 (1889) ; *Pothi* v. *Naganna,* (1916)30 Mad. L.J. 62 (F.B.), *China Surya Rao* v. *Surya Chandra Rao* (1937)1 Mad. L.J. 676; *Subbu Naidu* v. *Varadarajuli,* (1947) Mad. 694 : A.I.R. 1948 Mad. 26.

88. Act XVI of 1908, s. 49.

89. *Ulfatunnissa Elahijan Bibi* v. *Hosain Khan,* 9 C., 520, 525, F. B. (1882); 12 C. L. R., 209 ; and see *The Bengal Banking Corporation* v. *S. A. Mackertich,* 10 C., 315, 322 (1883) ; *Thandavan* v. *Filliamma,* 15 M., 336, 340 (1892).

90. *Ulfatunnissa Elahijan Bibi* v. *Hosain Khan,* supra ; *see* cases there collected and in Field, *Ev.,* 451-453 ; *see* last note and *Gomaji* v. *Subbarayappa,* 15 M., 253 (1891) ; *Madras Deposit and Benefit Society, Ltd.* v. *Oonnammalai Ammal,* 18 M., 29 (1894). So also though an agreement may not be admissible in evidence as creating an interest in land, still it may be used for the purpose of obtaining specific performance ; *Adakkalam* v. *Theethan,* 12 M., 505 (1888) ; *Nagappa* v. *Devu,* 14 M., 55 (1890).

91. Field, *Ev.,* 451, 452.

92. Act IV of 1882, s. 54 §§ 2, 3.

93. *Ib.* s. 59.

94. *Ib.,* s. 107.

95. *Ib.,* s. 123.

96. *Ib.,* s. 118.

CENTRAL LIBRARY

In the case of a simple mortgage, there can be no delivery of possession ; so all such deeds must be registered. [97]

Documents which require registration under the compulsory provisions of the Registration Acts are (except for collateral purposes) inadmissible in evidence when not registered. [98] Documents which do not require registration under those provisions are admissible in evidence, for all purposes, even though not registered. [1] Section 17 of the Registration Act [(III of 1877)—now s. 17 of Act XVI of 1908] should not be construed as requiring a document to be registered which would not have required registration when it was executed. So an instrument which did not require registration under Act XX of 1866 is not inadmissible in evidence by reason of Act III of 1877. [2] As an unregistered document which requires registration is inadmissible as evidence of any transaction affecting immovable property or conferring a power to adopt, [3] oral or other secondary evidence of the transaction embodied in the document will be excluded by sections 91 and 65 of the Indian Evidence Act. The result is that transactions committed to writing if not registered when registration is necessary, are *incapable of proof and wholly inoperative*, as indeed was held to be the result of the Registration Act even before the Evidence Act came into operation. [4] "Where a party comes into Court resting his claim on a written title which the law requires to be registered, he cannot, when he has failed to register, and is in consequence unable to use his title-deed, turn round and say I can prove my title by secondary evidence." It would be useless to have a compulsory Registration Act, if such a course were open to suitors. [5] Where the instrument inadmissible for want of registration was a receipt, oral evidence of the payment of the money was admitted on the principle embodied in illustration (*e*) to section 91 of the Indian Evidence Act. [6] Secondary evidence may be admissible in the case of a document which

---

97. Field, Ev., 446, 447.

98. Act XVI of 1908, s. 49; *Gerua Bisoyal* v. *Kshyama Bisoyal*, A.I.R. 1962 Ori. 107 ; and as to documents which have been *held* to require registration, *see* cases collected in Field, *Ev.*, 447, 448 ; *Gurunath Shrinivas Desai* v. *Chenbasappa*, 18 B., 745 (1893).

1. *Gian Singh* v. *Mohan Lal*, A.I.R. 1964 Punj. 346. *See* cases collected in Field, *Ev.*, 448, 449.

2. *Desai Motilal Mangalji* v. *Desai Parashottam Nandlal*, 18 B., 92 (1893).

3. Act XVI of 1908, s. 49.

4. Field, *Ev.*, 449, 450 ; *Sheikh Rahmatulla* v. *Skeikh Sariutulla Kagchi*, 1 B. L. R., F. B., 58 (1868) ; 10 W. R., F. B., 51 ; *Monmohinee Dossee* v. *Bishen Moyee Dossee*, 7 W. R., 112 (1867) ; *Somu Gurrukhal* v. *Rangammal*, 7 Mad. H. C. R., 13 (1871), [admissions by defendant] ; *Mussamut Kaboolun* v. *Shamsher Ali*, 11 W. R., 16 (1869) ; *Dinanath Mookerjee* v. *Debnath Mullick*., 5 B. L. R., App. 1 (1870) ; 13 W. R., 307 ; *Sheik Ibrahim* v. *Parvata*, 8 Bom. H. C. R., A. C. J., 163 (1871) ; *Crotedie* v. *Kullar Chotedhry*, 21 W. R., 307 (1874) ; *Shaikh Mahomed Ohid* v. *Kalee Pershad Singh*, 24 W. R., 320 (1875) ; *Ram Chander Haldar* v. *Govind Chunder Sen*, 1 C. L. R., 542 (1878) ; *Divethi Varada Ayyangar* v. *Kishnasami Ayyangar*, 6 M., 117 (1882).

5. *Monmohinee Dossee* v. *Bishen Moyee Dossee*, 7 W. R., 112 (1867), cited and approved in *Sheikh Rahmatulla* v. *Sheikh Sariutulla Kagchi*, 1 B. L. R., F. B., 58, 79 (1868) : 10 W. R., F. B., 51.

6. *Soorjoo Coomar Bhuttacharjee* v. *Vugwan Chunder Roy*, 24 W. R., 328 (1875) ; *Dalip Singh* v. *Durga Prasad* 1 A., 442 (1877) ; *Waman Ramchandra* v. *Dhondiba Krishnaji*, 4 B., 126 (1879) ; *Venkayyar* v. *Venkatasubbayyar*, 3 M., 53 (1881).

CENTRAL LIBRARY

is unregistered through no fault of the plaintiff.[7] In the undermentioned case the defendant's title-deed was inadmissible in evidence as it was not registered; but it was *held* that though the defendant could not prove a title by purchase, it was open to him to establish his title without the aid of the deed of sale; that his possession of the premises in question for more than twelve years prior to the institution of the suit was adverse to the predecessors of the plaintiff whose claim, as assignee of their interests, was consequently barred.[8] Where the defendants purchased land from the plaintiff, and gave bonds for the purchase-money, and these bonds were not registered and were therefore, not admissible in evidence; it was *held*, that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge on the property sold in respect of the unpaid purchase-money.[9] When the fact is *admitted*, to prove which it would be necessary to use in evidence a document which has not been registered, although registration thereof is by law compulsory, the non-registration cannot affect the decision of the case. The question of registration becomes material only when it is sought to use the document in evidence.[10] So where the existence of the agreement was not disputed and its production was not necessary, it was held that the plaintiff was entitled to whatever relief the effect of the plaint and written statements taken together would entitle him on the admission of the defendant.[11] It has, however, been said to be doubtful whether, if the document itself is tendered in evidence, any admission of its execution could make up for the want of registration; that there is a difference between admitting the fact, to prove which the document is sought to be used, and admitting the document itself when offered as evidence and rejected for want of registration. Where in consequence of the admission it becomes unnecessary to use the documents at all, the fact of non-registration may be immaterial; but the case is different when the existence of the document is disclosed and the document itself produced.[12] The provisions of the Registration Act, however, will not be permitted to be used to subserve fraud.[13]

The effect of the Specific Relief Act therefore is to render registration a *sine qua non* to the validity of certain documents, and the object of section 3, clause (b) of the Specific Relief Act, would appear to be to prevent any specific relief being given either by Specific Performance, Injunction or otherwise, the effect of which would be to weaken or nullify the provisions of the former Act; as also to enjoin that a specific rule of the Stature Law prescribing formalities in respect of the execution of documents shall not, as was done by the Court of Chancery in the case of the Statute of Frauds, be evaded under the cover of some opposing equity which was claimed however to be either subservient to the true object of the Statute, or collateral to it and independent of it. The Courts of this

---

7. *Nyankka Routhen* v. *Vavana Mahomed Naina Routhen*, 5 Mad. H. C. R., 123 (1869); *Nagappa* v. *Devu*, 14 M., 55 (1890).

8. *Sambhubhai Karsandas* v. *Shivlaldas Sadashivdas Desai*, 4 B., 89, (1879).

9. *Virchand Lalchand* v. *Kumaji*, 18 B., 48 (1892).

10. *Syed Reza Ali* v. *Bhikun Khan*, 7 W. R., 334 (1867).

11. *Chedambaram Chetty* v. *Karunalyavalangapuly Taver*, 3 Mad. H. C. R., 342 (1867); *Huddleston* v. *Briscoe*, 11 Ves., 583-596; and see *Sheikh Ibrahim* v. *Parvatta*, 8 Bom. H.C. R. A. C. J., 163 (1871).

12. Field, *Ev.*, 453, 454.

13. *See* generally as to the Registration Act and cases thereunder; Field, *Ev.*, 443-459.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

country are prohibited from affecting by their orders the operation of the Registration Act, it is of course none the less necessary to clearly ascertain whether or not the relief which it is proposed to give will in fact affect such operation. Therefore though a document which purports to create an interest in land requires registration, [14] and if it be not registered will not be available as affecting the property comprised therein, [15] yet such a document though inadmissible in evidence as *creating an interest in land* may be used for the purpose of obtaining a Specific Performance of the agreement evidenced by it. [16] In such a case the operation of the Registration Act is not affected because it has been held that that Act does not itself operate to exclude unregistered documents except when tendered as affecting that which the Act says they shall not affect, *viz.*, a conveyance as distinct from a contract to convey. They will not operate to transfer ownership and cannot be received in evidence to show that the ownership has passed from one person to another, and in so far as they are used for this purpose specific relief will in respect of them be refused.

56. Varieties of Covenants.—Covenants are either of an affirmative or negative nature. Negative covenants may be either express or implied. A contract or conveyance may comprise covenants of both kinds, that is an affirmative covenant and a negative covenant whether express or implied. The ordinary remedy by way of damages is available for the breach of covenants whether affirmative or negative in form. The remedy by way of specific relief however differs, for affirmative covenants are enforced by Specific Performance and negative covenants by Injunction.

(i) **Affirmative.**—When a person covenants that something has been done or shall be done hereafter the covenant is said to be affirmative. In cases where the covenant is affirmative, specific relief is given by way of Specific Performance, [17] that is, by ordering a party to do the very act which he is under an obligation to do. The question whether an affirmative covenant is or is not the subject of Specific Performance is determined by the rules contained in Chapter II of the Specific Relief Act. If under those rules a Court would not specifically enforce a contract it cannot grant an Injunction to prevent the breach of such contract. [18]

(ii) **Negative.**—Where a man covenants that a thing has not been done or shall not be done hereafter, the covenant is a negative one. In cases where the covenant is negative, specific relief is given by way of Injunction. [19] A negative agreement not to do a certain act may be either express, [20] or it may be

---

14. Act XVI of 1908, s. 17, cl. (*b*).
15. *Ib.*, s. 49.
16. *The Bengal Banking Corporation* v. *S. A. Mackertich*, 10 C., 315 (1883) ; *Addakkalam* v. *Theetham*, 12 M., 505 (1888) ; *Nagappa* v. *Devu*, 14 M., 55 (1890) ; *Chunilal Pannalal* v. *Bomanji Mancherji Modi*, 7 B., 310 (1883) ; *Shridhar Balla Kelkar* v. *Chintaman Sadashiv Mehendale*, 18 B., 396 (1893) ; See *Purmandas Jewandas* v. *Dharsey Virji*, 10 B., 101 (1885) ; *Hormasji Manekji Dadachanji* v. *Keshav Purshotam*, 18 B., 13 (1893).
17. Kerr, *Inj.*, 440.
18. Act 47 of 1963, s. 41(e).
19. Kerr, *Inj.*, 440, *et seq.* for instances illustrating the issue of Injunctions in the case of negative covenants.
20. Act 47 of 1963, s. 42.

CENTRAL LIBRARY

implied.[21] So if *A* contracts with *B* to sing for twelve months at *B's* theatre and not to sing in public elsewhere, the covenant by *A* not to serve others than *B* during that time is an express negative covenant ; but if *B* contracts with *A* that he will serve him faithfully for twelve months as a clerk, the negative covenant not to serve others than *A* during that time is implied only ; an exclusive service being raised by implication from the affirmative covenants to serve *B* during the period mentioned.

In restraining by Injunction the breach of a negative covenant, the interference of the Court is in effect an order for Specific Performance. "An agreement may be as effectually performed in this way as by an order for the performance of the thing to be done."[22] In granting Injunctions to restrain the breach of negative covenants the Court will be guided by the rules and provisions contained in Chapter II of the Specific Relief Act relating to Specific Performance.[23] The cases in which an Injunction may be granted against breach of contract are substantially the same as those in which an Injunction may be granted against the commission of a tort. The case must be one of trust or a case where damages are not a possible or adequate remedy.[24] In the case, however, of Injunctions against the breach of obligations arising out of contract, the Court will, unless and until the contrary is proved, presume that the breach of a contract to transfer immovable property cannot be adequately relieved by damages and that the breach of a contract to transfer movable property, can be thus relieved.[25]

The books contain numerous examples of Injunctions against the breach of express negative coventnts.[26] If parties for valuable considerations, with their eyes open, contract that a particular thing shall not be done, the Court will say by Injunction that the thing shall not be done. The Court in fact specifically performs that negative bargain which the parties have made between themselves.[27]

The English Courts have jurisdiction on a proper case being made out to restrain parties from violating an agreement not to apply to Parliament.[28] But in India an Injunction cannot be granted to restrain persons from applying to any legislative body.[29]

A class of covenants which the English Courts are constantly enforcing by Injunction are covenants in partial restraint of trade where the limitation is reasonable ; covenants in total restraint of trade being absolutely void on grounds

---

21. *Ib., Madras Railway Co.* v. *Rust*, 14 M., 18 (1890) ; *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702, 711 (1894).

22. *Lumley* v. *Wagner*, 1 D. M. & G., 615, *per* Lord St. Leonards. The Injunction does nothing more than give the sanction of the process of the Court to that which already is the contract between the parties ; *Doherty* v. *Allman*, 3 App. Ca., 720.

23. Act 47 of 1963, s. 38.

24. Compare *ib.*, s. 38(3)(a)-(e) and ss. 11(1), 10(a)-(b). s. 38(3) (d) relating to Injunctions against multiplicity of proceedings is peculiar to Injunctions against Tort.

25. Act 47 of 1963, s. 10, *Explanation*.

26. See Kerr, *Inj.*, 440, *et seq.*

27. *Doherty* v. *Allman*, 3 App. Cas., 720.

28. Kerr, *Inj.*, 471.

29. Act 47 of 1963, s. 41(e).

CENTRAL LIBRARY

of public policy.[30] The subject, however, is of less importance in India where trade is in its infancy and the Legislature has wished to make the smallest number of exceptions to the rule against contracts whereby trade may be restrained.[31] Under the Indain Contract Act[32] every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void ; saving of agreements not to carry on a business of which the good-will is sold and such agreements between partners prior to dissolution or during the continuance of the partnership. Save, therefore, in the case of the excepted agreements[33] no Injunction can issue. It is clear that the restriction aimed at by the Act is not an absolute one only and that an agreement may still be void though it only affects to create a partial restriction.[34] The Indian Contract Act does away with the distinction between total and partial restraint of trade and makes all contracts falling within the terms of the section[35] void unless they also fall within the terms of the exceptions to that section which was intended to prevent a partial as well as a total restraint of trade.[36] A stipulation, however, in a contract prohibiting any sales of goods to others, during a particular period, of a similar description to those bought under the contract is not a stipulation in restraint of trade.[37] In the undermentioned case[38] an Injunction was granted restraining a party from practising as a doctor in Zanzibar on his own account during the period of three years for which he had agreed to become an assistant of another. Where a person having a license for the manufacture of salt entered into a contract with a firm of merchants whereby it was provided that he should not manufacture salt in excess of the quantity which the firm, at the commencement of each manufacturing season, should require him to manufacture ; and that all salt manufactured by him should be sold to the firm for a fixed price, and the

---

30. See cases cited in Kerr, *Inj.*, 449, and in Mathews on *Restraint of Trade* (1893). Three English cases on the subject are *Mason* v. *Provident Clothing*, L. R., A. C. (1913), 724 ; *Nevanas* v. *Walker* L. R., 1 Ch. (1914), 413 ; *Easter* v. *Russ*, L. R., 1 Ch. (1914), 468.

31. *Oakes* v. *Jackson*, 1 M., 134, 145 (1876), *per* Kindersley, J.

32. Act IX of 1872, s. 27.

33. See Act 47 of 1963, s. 42.

34. *Madhub Chunder Poramanick* v. *Rajcoomer Doss*, 14 B. L. R., 76, 85, 86 (1874) ; 22 W. R., 370 ; *Nur Ali Dubash* v. *Abdul Ali*, 19 C., 765 (1892) ; *The Brahmaputra Tea Co., Ld.* v. *Scarth*, 11 C., 545 (1885).

35. Sales of secret processes are not within the principle or the mischief or restraint of trade at all ; *Leather Cloth Co.* v. *Lorsont*, 9 Eq., 345 ; Mathews, *op. cit.*, 26, 27, 91, 92, 121, 129, 130, 209, 229 ; *Maxim Nordenfelt Guns and Ammunition Company* v. *Nordenefelt* (1893), 1 Ch., 630. An agreement of service by which a person binds himself *during the term of his agreement* not to compete with his employer is not, it seems, within the terms of the section : *The Brahmaputra Tea Co., Ld.* v. *Scarth*, 11 C., 545, 550 (1885) ; *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 708 (1894). As to contracts restraining the liberty of sale of goods, v. *post*.

36. *Nur Ali Dubash* v. *Abdul Ali*, 19 C., 765 (1892) ; *Mackenzie* v. *Striramiah*, 13 M., 472 (1890) ; *The Brahmaputra Tea Co., Ld.* v. *Scarth*, 11 C., 545 (1885).

37. *Carlisle Nephews & Co.* v. *Ricknauth Bucktearmull*, 8 C., 809 (1882) ; see *Sadagopa Ramanjiah* v. *Mackenzie*, 15 M., 79 (1891).

38. *Charlesworth* v. *Macdonald*, 23 B., 103 (1898).

CENTRAL LIBRARY

agreement was to be in force for a period of five years ; it was *held,* in a suit by the merchants for an Injunction restraining the licensee from selling his salt to others and for damages, that whether or not the first of these clauses was invalid under section 27 of the Contract Act, it was separable from the second clause which was not bad as being in restraint of trade. [39] A contract under which goods are purchased at a certain rate for a certain market, containing a stipulation that if the goods go to another place a higher rate should be paid for them, is not one in restraint of trade. [40]

Every agreement in restraint of the marriage of any person other than a minor being void, [41] as also saving certain exceptions, every agreement in restraint of legal proceedings, [42] it follows that no Injunctions can be granted in respect of the breach of such agreements.

Though affirmative covenants are enforceable by Specific Performance, yet contracts and covenants, though affirmative in form, may often involve a negative in substance. When the importation of a negative quality into an affirmative agreement is not against the meaning of the agreement, the Court will import the negative quality and restrain the doing of acts which are inconsistent with the agreement. [43] But if an agreement affirmative in form is of such a nature that it cannot be specifically enforced, and the application for an Injunction is in effect and spirit an application for a decree for Specific Performance, the Court will not import a negative quality into the agreement, but will leave the plaintiff to his remedy by damages. [44] In *Modern Food Industries Ltd.* v. *S. K. Bottlers (P.) Ltd.* [45] it has been held that in exceptional cases negative covenants may be enforced by injunction.

Licence containing no provision for termination cannot be said to be an irrevocable licence and that will depend on the construction of the contract and on true construction of the terms of the contract, the licence was not intended to be perpetual and thus injunction was refused [*Winter Garden Theatre* v. *Millenium* (1947) 2 All E.R. 331 (H.L.)].

Sale of a racecourse with a restrictive covenant imposed by the vendor that the purchaser should not use the land otherwise than for horse-racing. After the sale of the land to a purchaser who proposed to use the land for development a question arose whether injunction could be issued in a *quia timet* action. It was held that the land was sold with knowledge that the purchaser intended to use it for a purpose other than horse-racing ; accordingly there would be no breach of covenant by completing the contract for sale and injunction was refused [*Tophams Ltd* v. *Sefton,* (1966) 1 All E.R. 1039 (H.L.)].

---

39. *Sadagopa Ramanjiah* v. *Mackenzie,* 15 M., 79 (1891) ; s. c. in Lower Court, 13 M., 472 (1890).

40. *Prem Sook* v. *Dhurum Chand,* 17 C., 320 (1890).

41. Act IX of 1872, s. 26. See *Mahamad Yamain* v. *Razi Begum,* 42 A., 134 (1919).

42. *Ib.,* s. 28, which saves certain contracts to refer to arbitration.

43. Kerr, *Inj.,* 471. [See *Nusserwanji Merwanji Panday* v. *Gordon,* 6 B., 266, 280 (1881) ; *Callianji Harjivan* v. *Narsi Tricum,* 18 B., 712, 713 (1894)].

44. Kerr, *Inj.,* 473.

45. A.I.R. 1984 Del. 119. See, *Sunil Chand* v. *Aryodaya Spg. & Wvg. Mills,* A.I.R. 1964 Guj. 115.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(iii) **Affirmative coupled with negative.**—An agreement may contain both affirmative and negative covenants, the latter of which may be either express or implied. Where the affirmative covenant is capable of Specific Performance it may be so enforced, and the negative covenant may be enforced by an Injunction. Where, however, the affirmative covenant is not capable of Specific Performance, it was formerly a matter for doubt whether the Court would enforce by Injunction the negative part of an agreement containing both affirmative and negative stipulations, unless the affirmative part of the agreement was of such a nature that it would be specifically enforced by decree.[46]

The general rule is that where Specific Performance will not be granted an Injunction will not be issued ; and that Specific Performance, in part is impossible, for, as a general rule, Equity will not enforce *part* of a contract unless the whole can be performed.[47] It would follow strictly therefore that the Court should refuse to interfere by Injunction to restrain the breach or non-performance of part of an executory contract where the rest of the contract is incapable of, or is not a proper subject for, Specific Performance, since the grant of an Injunction in such a case would be tantamount to a merely partial enforcement of the contract.[48] And so it was formerly held that where the positive part of an executory contract could not be performed by the Court, it would not enforce the negative part by an Injunction.[49] But now Specific Performance in part will be decreed if the contract be one which is divisible. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct a Specific Performance of the former part,[50] for owing to the divisibility of the whole contract, the parts in question are really independent contracts. By analogy therefore to this rule of Specific Performance and notwithstanding the rule of Injunction which prohibits relief in the case of a breach of contract, the performance of which would not be specifically enforced,[51] when a contract comprise an affirmative agreement to do a certain act coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel Specific Performance of the affirmative agreement does not preclude it from granting an Injunction to perform the negative agreement : Provided that the applicant has not failed to perform the contract so far as it is binding upon him.[52] In the leading case of *Lumley v. Wagner*[53] there was an express negative covenant coupled with the affirmative covenant. There the defendant agreed with the plaintiff that she would sing at the latter's theatre during a certain period of time

---

46. See Kerr, *Inj.*, 476.
47. Fry, *Specific Performance*, § 821; see Act 47 of 1963, s. 12(1).
48. Fry, *S. P.* §§ 1150, 1151.
49. *Ib.*, § 852.
50. Act 47 of 1963, s. 12(4) ; Fry, *Specific Performance*, § 821.
51. Act 47 of 1963, s. 41(e).
52. Act 47 of 1963, s. 42 ; *Lumley* v. *Wagner*, 1 DeG. M. & G., 604. In *Subba Naidu* v. *Haji Badsha Saheb*, 26 M., 168, 173 (1902), it was held that there had been no such failure. See, *Ambarnath Mills* v. *Gadbole*, A.I.R. 1957 Bom. 117 (An affirmative contract in a negative form cannot be enforced by injunction in India).
53. 1 DeG. M. & G., 604 (1852).

CENTRAL LIBRARY

and would not sing elsewhere without the plaintiff's written authority; and the Court interfered to prevent the violation of the negative stipulation although it could not enforce the Specific Performance of the entire contract. But the principle of this case has not been confined to cases of express negative stipulations, but has been applied to cases where the negative agreement is only implied [54], which cases are also included within the terms of section 42 of the Specific Relief Act. [55] The doctrine has been criticised in England, and it has been stated to be doubtful whether the presence of a negative stipulation can be relied on, if the contract is not such in its nature as to be the proper subject of the Equitable jurisdiction. [56] That, however, the Courts in India have jurisdiction in the case of express negative stipulations is clear from the terms of the section. Again, it has been observed [57] that it is not easy to see the limits to which the doctrine of an implied negative might be carried. Every agreement to do a particular thing in one sense involves a negative. It involves the negative of doing that which is inconsistent with the thing you are to do. But it does not at all follow that because a person has agreed to do a particular thing, he is therefore to be restrained from doing everything else which is inconsistent with it. [58] If there is a distinct negative contract in the agreement the Court may fasten upon that and separating that from the rest of the agreement may enforce Specific Performance of that contract. But when a plaintiff comes into Court upon an agreement which does not contain any such direct negative clause, and when one must infer the negative from the necessity of the case the instances in which the Court has found it possible to act are very few and special. [59] The principle, no doubt, does not depend upon whether there is an actual negative clause; but, for the grant of an Injunction, the Court must be able to say that the parties were contracting in the sense that one should not do this or the other—some specific thing upon which one can put one's finger. [60] In such cases as these there is no very definite line, and the case of *Lumley v. Wagner* is an anomaly to be followed in cases like it,

---

54. Fry on *Specific Performance*, § 854; *Webster* v. *Dillon*, 3 Jur., N. S., 482; *Montague* v. *Flockton*, L. R., 16 Eq., 189 [two cases of doubtful authority], *see Whitwood Chemical Co.* v. *Hardman*, (1891), 2 Ch., 416; *De Mattos* v. *Gibson*, 4 DeG. & J., 276; *Sevin* v. *Deslandes*, 30 L. J. Ch., 457.

55. See, *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 708, 709 (1894); s. c. in appeal, 19 B., 764 (1895).

56. Fry, *op. cit.*, § 860, citing observations of Lord Selborne in *Wolverhampton and Walsall Railway Co.* v. *London and North-Western Railway Co.*, L. R., 16 Eq., 440.

57. Fry, *op. cit.*, § 857.

58. *Whitwood Chemical Co.* v. *Hardman*, L. R., 1891, 2 Ch., 426, 427, *per* Lindley, L J., cited in *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 709 (1894).

59. *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 713 (1894), citing *Peto* v. *Brighton and Uckfield, &c., Railway Co.*, 1 H. & M., 486.

60. *Whitwood Chemical Co.* v. *Hardman*, supra *per* Lindley, L. J. [See *"Star" Newspaper Co., Ld.* v. *O'Connor*, W. N. (1893), 114, where Kekewich, J., referring to this passage and stating the law to be settled by the former case said: "Putting that aside," (the observation of Lindley G. J.) "the judgment of the Court of appeal must go to this,—that in order to grant an Injunction in aid of a contract of service you must find an express negative purpose."]

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

but an anomaly which it would be very dangerous to extend. [61] The present tendency in England thus seems to be not to extend the principle of *Lumley v. Wagner* and to limit the doctrine in the leading case (*a*) to contracts of such a nature as are the proper subject of Equitable jurisdiction, and (*b*) in regard to implied negative terms to refuse to raise such terms by implication except in the cases where the Courts have already done so. [62] Though the Courts in India have an undoubted jurisdiction to grant an Injunction either in the case of express or implied [63] negative covenants coupled with affirmative covenants incapable of Specific Performance, yet it is apprehended that as the grant of an Injunction is in all cases a matter of discretion, the Courts in India will, in the exercise of their discretionary jurisdiction, be guided by the English judicial opinion upon this subject. [64]

The general principle that in granting an Injunction the Court must exercise its discretion with a view to all the circumstances of the case particularly holds good in the special case where Specific Performance is indirectly sought by the enforcement of an implied negative covenant. Even in *Lumley v. Wagner* [65] where there was held to be a direct negative covenant, the plaintiff was only held to be entitled to the benefit of this principle of law, because looking at the merits and the circumstances of the case he was right. [66]

Cases, however, have occurred and will occur where the circumstances of the case require the importation of a negative quality. Thus the contract of charter-party is from the peculiar nature of the subject of the contract, an exception to the general rule that a negative quality will not be imported into an affirmative agreement unless the agreement is of such a nature that a decree for Specific Performance can be made ; and the owner of a vessel will be restrained from doing any act inconsistent with the charter-party. [67] But though where a charter-party has been actually completed the Court will, by Injunction, prevent an employment of the ship inconsistent with its terms, where there is only an agreement for a charter-party, no such Injunction will be granted. [68] In the case last cited, West, J., said : "As to the merits, section 57 [69] of the Specific Relief Act speaks of the Court

---

61. *Ib.*, cited in *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 709, 710 (1894).

62. Fry, *op. cit.*, §§ 862, 857-861 ; Nelson's *Specific Relief Act*, 301. See also, Sarkar's *Specific Relief Act* (13th ed.), pp. 539-542.

63. See *Madras Railway Co.* v. *Rust*, 14 M., 18 (1890).

64. Nelson, *op. cit.*, 301, 145 : *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 709, 711, 713, 714 (1897), s. c. in appeal, 19 B., 764 (1895) ; as to the discretion to be exercised where a negative quality is imported, see *Doherty* v. *Allman*, 3 App. Cas., 709, cited in *Callianji Harjivan* v. *Narsi Tricum*, supra, at pp. 712, 713. As to mutuality being unnecessary, see *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B., 266, 280, 281 (1881). See also Sarkar's *Specific Relief Act* (13th ed.) on s. 42.

65. 1 DeG. M. & G., at p. 633.

66. *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702, 704 (1894). See also *Kirtynand* v. *Ramanand*, A.I.R. 1936 Pat. 456.

67. *De Mattos* v. *Gibson*, 4 D. & J., 276 ; *Sevin* v. *Deslandes*, 30 L. J., Ch., 457 ; Kerr, *Inj.*, 473 *et seq.*

68. *Haji Abdul Allarakhi* v. *Haji Abdul Bacha*, 6 B., 5 (1881) ; in this case the application was for an *interim* Injunction which was refused, but a rule *nisi* was granted. It does not appear whether this rule was ever heard.

69. Now s. 42 of Act 47 of 1963.

CENTRAL LIBRARY

being 'unable' to compel Specific Performance. The particular ground of inability is immaterial, and may be anything which constitutes a bar to Specific Performance under the provisions of Chapter II of the Specific Relief Act. In the illustrations to the section the bar to Specific Performance in each case is to be found in section 21, clause (*b*) of Chapter II, but if an Injunction may be given in the case of a contract, Specific Performance of which is forbidden under section 21, clause (*b*), it is plain that (unless section 57 is to be made a nullity), it can also be given in the case of a contract, Specific Performance of which is forbidden under section 21, clause (*g*), or under the combined clauses, or under any other section of Chapter II."[70]

Subba Naidu v. Haji Badsha Shahib.—The first case was referred to in a subsequent decision.[71] In this case plaintiffs advanced money to the defendants for the purpose of carrying on work in certain mica mines in pursuance of an agreement by which defendants undertook, in consideration of the advance, to send all the mica produced from the mines to plaintiffs and bound themselves not to send any of it to any firm other than plaintiffs' or keep any in stock. Plaintiffs now complained that defendants had, in breach of their agreement, arranged to consign and had already made consignments of mica to another firm and were keeping mica in stock. Plaintiffs filed this suit for Specific Performance and for an Injunction restraining defendants from acting in violation of the terms of the agreement. A temporary Injunction was subsequently applied for and obtained. Upon an appeal being preferred by defendants against the order granting the temporary Injunction : *Held*, that the Injunction was rightly granted. The defendants' contention was that inasmuch as the positive covenant could not be enforced by a decree for Specific Performance a breach of the negative covenant ought not to be restrained by an Injunction. As to this the Court observed as follows :—"Now, we are relieved from considering the question as to whether the positive covenant in this case can or cannot be specifically enforced because it is conceded by the counsel on behalf of the plaintiffs that it cannot. In this state of things, therefore, it has to be considered whether, under the law of this country, a breach of the negative covenant not to consign to third parties can be restrained by Injunction. The law with regard to the granting of permanent Injunctions is regulated by the provisions of the Specific Relief Act. Section 41(e) says an Injunction cannot be granted in certain specified cases, including an Injunction to prevent the breach of a contract, the performance of which would not be specifically enforced.

Section 42 says that notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, expressed or implied, not to do a certain act, the circumstance that the Court is unable to compel Specific Performance of the affirmative agreement shall not preclude it from granting an Injunction to perform the negative agreement, provided the applicant has not failed to perform the contract so far as it is binding on him."

---

70. *Madras Railway Company* v. *Rust*, 14 M., 18, 22 (1890) ; *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702, 711 (1894).

71. *Subba Naidu* v. *Haji Badsha Shahib*, 26 M., 168 (1902). See also, *Ambarnath Mills* v. *Gadbole*, A.I.R. 1957 Bom. 117 (Affirmative contract in a negative form cannot be enforced in India).

CENTRAL LIBRARY

Section 38(1) which is the first section of Chapter VIII which deals with perpetual Injunction, is as follows :—'Subject to the other provisions contained in or referred to, by this Chapter, a perpetual Injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication." Section 38(2) provides : "When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II" of that Act.

There are some of the rules and provisions in section 14, which speaks of contracts which cannot be specifically enforced, and one of the contracts which under that section cannot be specifically enforced, is referred to in section 14(1)(b)—'a contract which runs into such minute or numerous details, or which is dependent on the personal qualifications or volition of the parties, or otherwise from its nature, is such that the Court cannot enforce specific performance of its material terms'. Thus the proposition of law is that section 42 only applies to the case of contracts which are specified in section 14(1)(b). In other words, section 42 only applies to cases which may be described compendiously as cases like *Lumley v. Wagner*. There is certainly nothing in the words of section 42 to suggest that so narrow a construction should be placed upon it. There are authorities against the proposition. The facts in *Madras Railway Company v. Rust* [72] precisely support the view that section 42 means what it says and that it is not to be cut down.

Section 42 it seems, contemplates two distinct agreements, whether one of such agreements be express or implied. The negative part of an agreement will not be enforced, unless it constitutes a distinct, separate, and substantive part of the contract. If the negative part is merely subsidiary or incidental to the affirmative part, or if the affirmative and negative stipulations are merely correlative to and not capable of being separated from each other, the Court will not enforce the negative part by Injunction, unless the affirmative part is of such a nature that it can be specifically enforced. [73-76] The negative agreement may be express or implied. The Court will, where parts of the agreement are distinct and separable from the rest, import a negative, and interfere by way of Injunction. [77]

The Court will neither enforce an express negative term nor will it import a negative and enforce by Injunction, unless the person who makes the application has actually performed his own part of the agreement. [78] The mere assertion on his part that it is his intention to perform his part of the agreement is not sufficient unless the Court can decree Specific Performance against him.[79]

57. Specific performance of affirmative agreements.—The appropriate remedy by way of specific relief in the case of affirmative covenants lies in the Specific Performance which consists in ordering a party to do the very act which he is under an obligation to do. The rules relating to the grant of this form of relief are contained in Chapter II of the Specific Relief Act. It would be beyond the scope of the present work to deal at length with the subject of Specific Performance, which is only here touched upon in so far as the principles which

---

72. 14 M., 18 ; *Deshpande* v. *Arvind Mills Co. Ltd.*, A.I.R. 1946 Bom. 423.
73-76. Kerr, *Inj.*, 481.
77. Kerr, *Inj.*, 479.
78. Act 47 of 1963, s. 42. Kerr, *Inj.*, 469, 473 ; Fry on *Specific Performance*, § 1152.
79. *Peto* v. *Brighton, Uckfield and Tunbridge Wells Railway Co.*, 1 H. & M., 468.

CENTRAL LIBRARY

govern the grant of Specific Performance have under s. 38 of the Specific Relief Act to be considered where Injunctions are issued to prevent the breach of obligations arising in contract. The jurisdiction of the Court in Injunction is connected with the Specific Performance of executory contracts in three ways :—(*a*) sometimes the Injunction is the instrument by which the Court specifically enforces the contract itself or some part of it (as in the case of express or implied negative agreements, whether standing alone or in connection with affirmative agreements); (*b*) sometimes the Injunction is merely incidental or ancillary to the performance of the contract ; and (*c*) sometimes the Injunction is used for the purpose of giving effect to rights resulting from the non-performance of the contract. [80] In the case cited the Court refused to enforce against an assignee of a covenant or an affirmative covenant involving the expenditure of money on land whether such assignee took with or without notice. [81]

58. Injunctions in aid of and ancillary to Specific Performance.—The second of the above cases exists when the Injunction is used in aid of or ancillary to the primary relief by Specific Performance. The jurisdiction of the Court in Injunction is often ancillary to that in specific performance, for the purpose of preventing the defendant making use of some legal interest or right vested in him in a way inconsistent with the equity claimed by the plaintiff, or embarrassing the plaintiff by dealing with the property during the pendency of the action, or obstructing the performance of some act incidental to the execution of the contract. In the class of cases now referred to, the Injunction is granted upon interlocutory application and until the trial, on the plaintiff showing a *primâ facie case* for Specific Performance. [82] The right to have an Injunction depends on the nature of the remedy which a Civil Court would give in the suit, and if it be shown that a decree for Specific Performance would necessarily follow proof of the facts alleged, an Injunction may properly be granted, as without it the suit may, and in many cases probably would be infructuous. [83] Thus interlocutory Injunctions have been granted during the pendency of a suit for Specific Performance restraining the bringing of an ejectment during the suit, and restraining the conveying away of the legal estate, or the sale or surrender of the estate, and restraining a purchaser, who had got into possession from cutting timber on the estate. [84] So as a general principle, if there is a clear valid contract for sale, the Court will not permit the vendor afterwards to transfer the estate to a third person, though such third person would be affected by *lis pendens*. A Court of Equity has jurisdiction, pending a suit for Specific Performance, to restrain a party from alienating or affecting by other acts the subject-matter of litigation. [85] So the Civil Procedure Code provides that an Injunction may be granted, if in any suit it is proved that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to to suit. [86] The Courts will in general restrain by Injunction any act inconsistent

---

80. Fry on *Specific Performance*, § 1146. See further as to the third case, *ib.*, §§ 1165-1167.

81. *Chaturbhuj* v. *Mansukram*, 27 Bom. L.R., 73 (1924).

82. Fry, *op. cit.*, §§ 1154, 1155.

83. In the matter of *Gunput Narain Singh*, 1 C., 74, 76 (1875).

84. Fry, *op. cit.*, §§ 1156-1158.

85. Kerr, *Inj.*, 500.

86. Civ. Pr. Code, *O.* 39, *r.* 1.

CENTRAL LIBRARY

with the due performance of the contract. [87] In the undermentioned case, [88] Jessel, M.R., observed as follows :—"I have no hesitation in saying that there is no limit to the practice of the Court with regard to interlocutory applications so far as they are necessary and reasonable applications ancillary to the due performance of its functions, namely, the administration of justice at the hearing of the cause."

59. Injunction to restrain the breach of negative agreements.—In the preceding paragraph Injunctions have been considered as incident or ancillary to the primary relief, namely, Specific Performance. Sometimes, however, the Injunction is itself the instrument of performance, that is, the instrument by which the Court specifically enforces the contract itself or some part of it. So the appropriate remedy in the case of a negative agreement is Injunction, as that for an affirmative agreement is Specific Performance. It is, however, only the form of the remedy which differs ; for whenever the Court grants an Injunction restraining the breach of any express or implied term of a contract it thereby *pro tanto* specifically enforces the performance of the contract. Where the contract contains express negative as well as positive terms, and the positive terms are capable of Specific Performance by the Court, the latter may and naturally will enforce by Injunction the observance of the negative terms ; for by so doing it promotes the complete performance of the contract as a whole. But where part of the contract is of such a nature as to be incapable of Specific Performance, a difficulty arises with respect to the Court's enforcement of any other part of it by Injunction, since the Court will not as a general rule, enforce part of an executory contract unless it can perform the whole. As already mentioned, [89] there are, however, cases in which, though the contract as a whole is such as the Court cannot or will not specifically enforce, it may nevertheless grant an Injunction restraining the breach of some express or implied term of it. [90]

60. In the case of obligations arising in contract, the Court will be guided by the rules and provisions relating to Specific Performance.—The Specific Relief Act enacts [s. 38(2)] that when an obligation arises from contract, the Court in issuing an Injunction must be guided by the rules and provisions contained in Chapter II of that Act relating to Specific Performance. Those rules and provisions are discussed below.

(i) **Cases in which Specific Performance is enforceable.**—Except as otherwise provided in Chapter II of the Specific Relief Act, the Specific Performance of any contract may in the discretion of the Court be enforced—

(*a*) when the act agreed to be done is in the performance wholly or partly, of a trust. [91]

So if *A* holds certain stock in trust for *B*, and *A* wrongfully disposes of the stock, the law creates an obligation on *A* to restore the same quantity of stock to *B*, and *B* may enforce Specific Performance of this obligation. [92]

---

87. *See* Fry, *op. cit.*, §§ 1161, 853.

88. *Smith* v. *Peters*, L.R., 20 Eq., at p. 513. See also Snell's *Principles of Equity*, 28th ed. p. 639.

89. v. *ante*, § 55.

90. Fry, *op. cit.*, §§ 1147, 1148, 1150, 1152 ; *see* High, *Inj.*, § 1134.

91. Act 47 of 1963, s. 11(1) [*see* Fry, *Specific Performance*].

92. See Act II of 1882, ss. 1 and 2, *see* s. 23, Act II of 1882.

CENTRAL LIBRARY

(*b*) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done. [93]

So if *A* agrees to buy, and *B* agrees to sell, a picture by a dead painter and two rare China vases ; *A* may compel *B* specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

(*c*) When the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief.

Unless and until the contrary is proved, the Court will presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money and that the breach of a contract to transfer movable property can be thus relieved. [94] The jurisdiction to decree Specific Performance in cases respecting chattels is limited to special circumstances. A breach of contract is usually remediable by a grant of damages. But in cases of contracts respecting land the jurisdiction is in general maintained, for damages for the non-performance of a contract for land, which must be calculated upon the general value of land, may not be a complete remedy to the purchaser, to whom the land purchased may have a peculiar and special value.

The following illustrations are given :

(*i*) *A* contracts with *B* to sell him a house for Rs. 1,000 ; *B* is entitled to a decree directing *A* to convey the house to him, he paying the purchase-money.

(*ii*) In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with *Z* to make an archway through their railway to connect lands of *Z* served by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. *Z* is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money, and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf [95]

(*iii*) *A* contracts to sell, and *B* contracts to buy a certain number of railway-shares of a particular description. *A* refuses to complete the sale. *B* may compel *A* specifically, to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured. [96]

(*iv*) *A* contracts with *B* to paint a picture for *B*, who agrees to pay therefor Rs. 1,000. The picture is painted. *B* is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

(d) When it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Thus *A* transfers without endorsement, but for valuable consideration, a promissory-note to *B*. *A* becomes insolvent, and *C* is appointed his assignee. *B* may compel *C* to endorse the note, for *C* has succeeded to *A's* liabilities and a

---

93. s. 38(3)(b) of Act 47 of 1963. Fry, *op. cit.*, §§ 81, 85, 89 ; *Falke* v. *Gray*, 4 Drew, 461.

94. Act 47 of 1963, s. 38 (3)(c) ; Fry, *op. cit.*, §§ 78, 62, 72.

95. *Storer* v. *Great Western Ry. Co.*, 2 Y. & C. N. R., 18, 53.

96. *Duncuft* v. *Albrecht*, 12 Sim., 189.

CENTRAL LIBRARY

decree for pecuniary compensation for not endorsing the note would be fruitless. [97]

(ii) Contracts of which the subject has partially ceased to exist.—Notwithstanding anything contained in section 56 of the Indian Contract Act, [98] a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

The following illustrations exemplify this provision :—

(*a*) *A* contracts to sell a house to *B* for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. *B* may be compelled to perform his part of the contract by paying the purchase-money.

(*b*) In consideration of a sum of money payable by *B*, *A* contracts to grant an annuity to *B* for *B's* life. The day after the contract has been made, *B* is thrown from his horse and killed. *B's* representative may be compelled to pay the purchase-money.

This section deals with one species only of impossibility arising subsequent to the formation of the contract, *viz.*, that which arises from the subject-matter of the contract 'ceasing to exist,' and its effect is to suspend the operation of the general rule contained in the Contract Act in this particular instance. It really determines merely the question upon whom the loss of the thing is to fall. [99]

(iii) Specific Performance of part of contract.—The Court will not direct the Specific Performance of a part of a contract except in cases coming under one of the matters [1] contained in section 12 of the Specific Relief Act. As section 12(2) of that Act determines the question as to the effect of one party to a contract being *totally* unable to perform his part owing to a *special* reason, so section 12(3) deals with the case where one party to a contract cannot perform a *part* of his agreement owing to *any* reason. The rules in this case depend upon the proportion which the part that cannot be performed bears to that which can be performed, and upon the question whether the unperformed part admits of compensation in money. If the proportion be small, then the contract admits of substantial performance and the case will be governed by section 12(2) ; if, on the other hand, it be large, the contract does not permit of substantial performance and the case will fall under section 12(3) of the Act. [2] Section 12(4) deals with cases where one part of a contract is severable, because it stands on a separate and independent footing to the other, and the performance of one part is either impossible or undesirable.

(a) Where part unperformed is small.—Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of either party, direct the Specific Performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

---

97. *Watkins* v. *Maude*, 2 J. & W., 243.
98. Act IX of 1872 (Contract), s. 56.
99. Nelson's *Specific Relief Act*, p. 127.
1. Act 47 of 1963, s. 12(1).
2. Nelson's *Specific Relief Act*, 131, 132, 142 ; *see* Fry on *Specific Performance*, §§ 50, 1209—1297 ; *Ryan* v. *Mutual Tontin Westminster Chambers Association*, L. R., 1 Ch. (1838), 98, 123. Sarkar's *Specific Relief Act* (13th ed.), pp. 94-103.

CENTRAL LIBRARY

The following illustrations are given :

(*a*) *A* contracts to sell *B* a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to *A*, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. *A* may be directed at the suit of *B* to convey to *B* the 98 bighas and to make compensation to him for not conveying the two remaining bighas ; or *B* may be directed at the suit of *A*, to pay to *A*, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(*b*) In a contract for the sale and purchase of a house and land for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct Specific Performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for Specific Performance, or may confine its decree to the house. [3]

(b) Where part unperformed is large.—Where a party of a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for Specific Performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all rights to compensation either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

The following illustrations are given by the Act :—

(*a*) *A* contracts to sell to *B* a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to *A*, and the other 50 bighas to a stranger, who refuses to part with them. *A* cannot obtain a decree against *B* for the Specific Performance of the contract ; but if *B* is willing to pay the price agreed upon, and to take the 50 bighas which belong to *A*, waiving all rights to compensation either for the deficiency or for loss sustained by him through *A's* neglect or default, *B* is entitled to a decree directing *A* to convey those 50 bighas to him on payment of the purchase-money.

(*b*) *A* contracts to sell to *B* an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that *A* is unable to convey the garden. *A* cannot obtain a decree against *B* for the Specific Performance of the contract ; but if *B* is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all rights to compensation either for the deficiency or for loss sustained by him through *A's* neglect or default, *B* is entitled to a decree directing *A* to convey the house to him on payment of the purchase-money. [4]

(c) Independent part of contract.—When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or

---

3. Act 47 of 1963, s. 12(2).
4. Act 47 of 1963, s. 12(3).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ought not to be specifically performed, the Court may direct Specific Performance of the former part. [5]

(iv) Liquidation of damages is not a bar to Specific Performance.—A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same. So if *A* contracts to grant *B* an under-lease of property held by *A* under *C*, and that he will apply to *C* for a license, necessary to the validity of the under-lease, and that if the license is not procured, *A* will pay *B* Rs. 10,000 ; and *A* refuses to apply for the license and offers to pay *B* the Rs. 10,000 ; *B* is nevertheless entitled to have the contract specifically enforced, if *C* consents to give the license. [6]

Nor is liquidation of damages a bar to the issue of an Injunction. So where in a case of breach of an agreement for personal service it was argued for the defendant that an Injunction should not be granted because the agreement provided for a penalty for its non-performance ; it was *held* that this should be no bar to the remedy by Specific Performance, it was no bar to the remedy by Injunction, to which the same principles applied. [7]

(v) Of the discretion of the Court.—The jurisdiction to decree Specific Performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so ; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal. [8] The same rule holds good for Injunctions in the case of obligations arising from contract. [9] Though the Court may not be precluded from granting an Injunction, yet in the exercise of a sound discretion it may refuse to grant it. [10]

The discretion of the Court which must always be exercised before granting an Injunction, [11] whether in a case arising under section 42 of the Specific Relief Act or otherwise, must be the discretion set forth in section 20 of that Act which recites cases in which the Court may properly exercise a discretion not to decree Specific Performance. [12] The Court will bear in mind that to grant an Injunction may amount in substance, although not in form, to a decree for Specific Performance. And therefore, the same considerations which would prevent it from giving a plaintiff a decree for Specific Performance of the contract ought to prevent it from granting an Injunction. [13]

(a) Delay.—The delay of either party in not performing the terms of the contract on his part or in not prosecuting his right to the interference of the Court by the institution of an action, or in not diligently prosecuting his action when

---

5. Act 47 of 1963, s. 12(4). Fry, *op. cit.*, §§ 822—865.
6. Act 47 of 1963, s. 23.
7. *Madras Railway Co.* v. *Rust*, 14 M., 18, 22 (1890).
8. Act 47 of 1963, s. 20 ; Fry, *op. cit.*, §§ 44-46. See *Gurusami Sastria* v. *Ganapathia Pillai*, 5 M., 337 (1882).
9. Act 47 of 1963, s. 38 ; *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 714 (1894).
10. *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 707, 716 (1894).
11. Act 47 of 1963, ss. 36, 38.
12. *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702, 715 (1894) ; s. c. in appeal, 19 B., 764, 768 (1895). *See* s. 20(2) of Act 47 of 1963.
13. *Ib.*, 19 B., 768.

CENTRAL LIBRARY

instituted, may constitute such laches as will disentitle him to the aid of the Court.[14] It is not possible however, to say exactly what amount of delay will bar the right to relief, for each case must depend upon its own circumstances. [15]

(b) **Unfair advantage.**—The Court may properly exercise a discretion not to decree Specific Performance, and, therefore, not to issue an Injunction, where the circumstances under which the contract was made were such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part. [16]

There are many instances in which, though there is nothing that actually amounts to fraud, there is, nevertheless, a want of that equality and fairness in the contract, which are essential to the grant of relief by Specific Performance. Unfairness may exist either in the terms of the contract itself or in matters extrinsic, and the circumstances under which it was made, such as intimidation, duress, mental incapacity, age, poverty, manner in which the contract was executed, inadequacy of price, absence of legal advice, intoxication, injury to third persons, undue advantage, breach of trust or duty. [17]

Callianji Harjivan v. Narsi Tricum.—The circumstances in the case of *Callianji Harjivan v. Narsi Tricum* [18] were held to be within this rule, and the Court accordingly refused to grant the Injunction for which prayer was made.

In this case the plaintiff sued for an Injunction to restrain the defendant from carrying on the business of a tailor or cutter for a period of 10 years from the 1st February 1893, on which day an agreement was made between them, which the plaintiff in this suit sought to enforce. By that agreement the defendant had contracted to enter into the plaintiff's employment and to serve him for 10 years at a remuneration of Rs. 37 a month.

The defendant was formerly in the plaintiff's service. He had left it, and it was alleged that when he left it, the plaintiff had large claims against him in respect of moneys for which he had not accounted. The plaintiff instituted criminal proceedings in the Police Court against him, and those proceedings were pending in January 1893. The defendant, however, was out on bail and had obtained employment in another milliners' shop in Bombay, carried on by one *B. J.*, in which service he had remained ever since.

This was the position of the parties when the negotiations between them began in January 1893. In the course of these negotiations the defendant was told that the Police Court proceedings against him would be abandoned. It was said, however, that the abandonment of these proceedings was quite independent of the agreement with the defendant, who indeed himself said that the plaintiff's solicitor told him that in any case the criminal case was to be withdrawn. The case was postponed for a fortnight, and ultimately, *viz.*, on the 15th February 1903, it was dismissed.

The defendant was then in the service of *B. J.* Subsequently the plaintiff called upon him to leave it and to enter his employment, as he had undertaken

---

14. Fry, *op. cit.*, § 1100, and see generally *ib.*, Ch. XXV and *ante*.
15. *Mokund Lall* v. *Chotay Lall*, 10 C., 1061, 1068 (1884).
16. Act 47 of 1963, s. 22(2)(a).
17. Fry, *op. cit.*, Ch. V, *passim*.
18. 18 B., 702, 715, 716 (1894) ; s. c. in appeal, 19 B., 764, 768, 769 (1895).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

to do by the agreement of the 1st February 1893, and the defendant refused. Upon these facts the Court observed as follows :—

"Now we think it is impossible to believe that in entering into this agreement with the plaintiff the defendant was not influenced by the idea that by doing so he was getting rid of the criminal charge against him. It is surely much more likely that this was his object than that he should have been led to do so by a desire to re-enter the plaintiff's service. The case was pending against him and might be proceeded with, and it was, no doubt, a matter of great importance to him that it should be withdrawn. If that was so, it is clear that the parties at the time of making the agreement cannot be said to have been on equal terms. The defendant was at a disadvantage. He was to some extent in the power of the plaintiff, and he was apparently without any legal advice. Thus situated, and without taking any time for consideration, he signed the agreement. If we look at the terms of the agreement, we find it to be one which we think it is unlikely that a man would sign unless under some pressure of circumstances, for by it the defendant bound himself to serve the plaintiff for a long period of time, and during all that time his remuneration was to remain the same. Having regard to these circumstances, we think that the parties to the agreement of the 1st February were not on equal terms, and that the Judge of the lower Court was right in refusing either to grant Specific Performance of the agreement or an Injunction against the defendant." [19]

Other illustrations of this principle [20] are the following :—

(*a*) *A*, a tenant-for-life of certain property, assigns his interest therein to *B*. *C* contracts to buy, and *B* contracts to sell, that interest. Before the contract is completed, *A* receives a mortal injury from the effects of which he dies the day after the contract is executed. If *B* and *C* were equally ignorant or equally aware of the fact, *B* is entitled to Specific Performance of the contract. If *B* knew the fact, and *C* did not, Specific Performance of the contract should be refused to *B*. [21]

(*b*) *A* contracts to sell to *B* the interest of *C* in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that *C's* interest is worth nothing. In fact, the value of *C's* interest depends on the result of certain partnership accounts on which he is heavily in debt to his partners. This indebtedness is known to *A*, but not to *B*. Specific Performance of the contract should be refused to *A*. [22] (*c*) *A* contracts to sell, and *B* contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. *B* does not know of this circumstance and *A* conceals it from him. Specific Performance of the contract should be refused to *A*. [23]

(*d*) *A's* property is put up to auction. *B* requests *C*, *A's* attorney, to bid for him. *C* does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to *B* at a low price. Specific Performance of the contract should be refused to *B*. [24]

---

19. *Callianji Harjivan* v. *Narsi Tricum*, 19 B., 764, 769 (1895), and see 18 B., at pp. 715, 716 (1894).
20. Act 47 of 1963, s. 20(2)(a).
21. See *Ellard* v. *Llandaff*, 1 Ball & B., 241.
22. See *Smith* v. *Harrison*, 26 L. J. Ch., 412.
23. See *Shirley* v. *Stratton*, 1 Bro. C. C., 140.
24. See *Twining* v. *Morrice*, 2 Bro. C. C., 326.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

(c) Hardship.—The Court may also properly exercise a discretion not to decree Specific Performance and therefore not to issue an Injunction, where the performance of the contract would involve some hardship on the defendant which he did not foresee whereas its non-performance would involve no such hardship on the plaintiff.[25] Relief may be given on this ground though the party seeking Specific Performance may be free from the least impropriety of conduct. The question of the hardship of a contract is generally to be judged of at the time at which it is entered into. The Court will not interfere where the hardship has been brought upon the defendant by himself; or where the hardship consists in the fact that the object which a party had in view in entering into the contract has become impossible. Further, in suits against Companies the Court will not consider the hardship which may result to the individual members from enforcing a contract made with the whole body.[26]

The following illustrations are given to elucidiate the provision of the Specific Relief Act :—

(*e*) *A* is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to *B*. *A*, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to *C*. Here, the enforcement of the contract would operate so harshly on *A*, that the Court will not compel its Specific Performance in favour of *C*.[27] (*f*) *A* and *B*, trustees, join their beneficiary, *C*, in a contract to sell the trust-estate to *D*, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific Performance of the contract should be refused to *D*.[28] (*g*) *A*, the owner of an estate, contracts to sell it to *B*, and stipulates that he, *A*, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific Performance of the contract should be refused to *B* unless he waives his claim to the unknown property.[29] (*h*) *A* contracts with *B* to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards that *A* cannot make the road without exposing himself to litigation. Specific Performance of the part of the contract relating to the road should be refused to *B*, even though it may be held that he is entitled to Specific Performance of the rest with compensation for loss of the road.[30] (*i*) *A*, a lessee of mines, contracts with *B*, his lessor, that at any time during the continuance of the lease *B* may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and Specific Performance of it should be refused to *B*.[31] (*j*) A contracts to buy certain land from *B*. The contract is silent as to access to the land. No

---

25. Act 47 of 1963, s. 20(2)(b) ; Fry, *op. cit.*, Ch. VI.
26. Fry, *op cit.*, § 417, 418, 426-428.
27. This illustration, which is taken from the case of *Faine* v. *Brown*, 2 Ves. Sen., 307, exemplifies the rule that forfeiture is a circumstance of hardship, see also illust. (*h*), *post*.
28. See *Wedgwood* v. *Adams*, 6 Beav., 600; 8 Beav., 103.
29. See *Baxendale* v. *Seale*, 19 Beav., 601.
30. See *Peacock* v. *Penson*, 11 Beav., 355.
31. See *Talbot* v. *Ford*, 13 Sim., 173.

CENTRAL LIBRARY

right of way to it can be shown to exist. Specific Performance of the contract should be refused to *B*.[32] (*k*) *A* contracts with *B* to buy from *B's* manufactory and not elsewhere all the goods of a certain class used by *A* in his trade. The Court cannot compel *B* to supply the goods ; but if he does not supply them *A* may be ruined, unless he is allowed to buy them elsewhere. Specific Performance of the contract should be refused to *B*.

(d) Partial performance.—On the other hand, the Court may properly exercise a discretion to decree Specific Performance and issue an Injunction where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of Specific Performance.[33] So if *A* sells land to a railway company who contracts to execute certain works for his convenience, and the company take the land and use it for their railway ; Specific Performance of the contract to execute the works should be decreed in favour of *A*.[34]

Independently of strictly legal considerations the merits of the case may preclude the interference of the Court, for, to use the language of Lord Cairns in *Eley v. Positive Government Security Life Assurance Company*,[35] the contract may be not one which ought to receive any specific favour from the Court.[36]

(vi) For whom contracts may be specifically enforced.—Except as otherwise provided by Chapter II of the Specific Relief Act, the Specific Performance of a contract may be obtained by—(*a*) any party thereto ; (*b*) the representative in interest, or the principal of any party thereto: Provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to Specific Performance of the contract, unless where his part thereof has already been performed ; (*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ; (*d*) where the contract has been entered into by a tenant-for-life in the exercise of a power, the remainderman ; (*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ; (*f*) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ; (*g*) when a public Company has entered into a contract and subsequently becomes amalgamated with another public Company, the new Company which arises out of the amalgamation ; (*h*) when the promoters of a public Company have, before its incorporation, entered into a contract for the purposes of the Company, and such contract is warranted by the terms of the incorporation, the Company.[37]

---

32. See *Denne* v. *Light*, 26 L.J., Ch., 459.

33. Act 47 of 1963, s. 20(3) ; Fry, *op cit.*, §§ 381, 103, 106.

34. See *Storer* v. *Great Western Ry. Co.*, 2 Y. & C. C. C., 48 ; Fry, *op. cit.*, §§ 103, 106.

35. 1 Ex. D., 20.

36. *Nusserwanji Merwanji Panday* v. *Gordon*, 6 B., 266, 284 (1881) ; *Callianji Harjivan* v. *Narsi Tricum*, 18 B., 702, 714 (1894).

37. Act 47 of 1963, s. 15. *See* generally as to the parties to the action, Fry, *op. cit.*, Part II, Chs. 1-6.

CENTRAL LIBRARY

(vii) For whom contracts cannot be specifically enforced.—Specific Performance will not be enforced where there is any personal bar to relief within the meaning of section 16 of the Act, nor in the case of contracts to sell property by one who has no title or who is a voluntary settlor.

(a) Personal bar to the relief.—Specific Performance of a contract cannot be enforced in favour of a person [38]—(*a*) who could not recover compensation for its breach ; thus *A*, in the character of agent for *B*, enters into an agreement with *C* to buy *C's* house. *A* is in reality acting not as agent for *B* but on his own account. *A* cannot enforce Specific Performance of this contract ; [39] (*b*) nor in favour of a person who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ; [40] thus (*i*) *A* contracts to sell *B* a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. *A* becomes insolvent. Neither he nor his assignee can enforce Specific Performance of the contract. (*ii*) *A* contracts to sell *B* a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. *A*, without *B's* consent, fells the trees. *A* cannot enforce Specific Performance of the contract. (*iii*) *A*, holding land under a contract with *B* for a lease, commits waste, or treats the land in an unhusbandlike manner. *A* cannot enforce Specific Performance of the contract. (*iv*) *A* contracts to let, and *B* contracts to take, an unfinished house, *B* contracting to finish the house and the lease to contain covenants on the part of *A* to keep the house in repair. *B* finishes the huose in a very defective manner : he cannot enforce the contract specifically, though *A* and *B* may sue each other for compensation for breach of it ; (*c*) nor will Specific Performance be enforced in favour of a person who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; thus *A* contracts to let, and *B* contracts to take, a house for a specified term at a specified rent. *B* refuses to perform the contract. *A* thereupon sues for, and obtains, compensation for the breach. *A* cannot obtain Specific Performance of the contract ; nor (*d*) in a favour of a person who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force. [41]

(b) Contracts to sell property by one who has no title or who is a voluntary settlor.—A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor [42] :—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same ; [43] thus *A* without *C's* authority, contracts to sell to *B* an estate which *A* knows to belong to *C*. *A* cannot enforce Specific Performance of this contract, even though *C* is willing to confirm it ;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the party or by the Court for

---

38. *Ib.*, s. 16.
39. *Ib.*, *see* Fry, *op. cit.*, § 299.
40. *Ib.*, *see* Fry, *op. cit.*, §§ 949, 950 952, 955, 956, 957-959, 964-981, 988.
41. See Act 47 of 1963, s. 16.
42. Act 47 of 1963, s. 17(1).
43. *Ib.*, s. 17(1)(a). See Fry, *op. cit.*, § 878

CENTRAL LIBRARY

the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.[44] Thus *A* bequeaths his land to trustees, declaring that they may sell it with the consent in writing of *B*. *B* gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with *C* to sell him the land. *C* refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of *B's* consent to the particular sale to *C*, the title which they can give *C* is, as the law stands, not free from reasonable doubt. Again, *A*, being in possession of certain land, contracts to sell it to *Z*. On enquiry it turns out that *A* claims the land as heir of *B*, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. *A* cannot compel *Z* specifically to perform the contract ;

(*c*) who previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.[45] Thus *A*, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. *A* cannot enforce Specific Performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it,[46] and an Injunction may be granted against him to restrain the sale. Thus *A* makes a settlement (not founded on marriage or other valuable consideration) of an estate on *B* and his children. *A* then contracts to sell the estate to *C*. *B* or any of his children may sue for an Injunction to restrain the sale.[47]

(viii) Non-enforcement except with variation.—For certain person, contracts cannot be specifically enforced except with a variation. Where a plaintiff seeks Specific Performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely)[48] :—(*a*) where by fraud or mistake of fact[49] the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it : (*b*) where by fraud, mistake of fact or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ; (*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ; (*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ; (*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.[50] Thus (*i*) *A*, *B* and *C* sign a writing by which

---

44. *Ib.*, s. 17(1)(b) ; *See* Fry, *op. cit.*, §§ 879-891 ; *Haji Mahomed Mitha* v. *Musaji Esaji*, 15. B., 657 (1891).
45. Fry, *op. cit.*, § 890.
46. Act 47 of 1963, s. 17.
47. *See* Act 47 of 1963, s. 38.
48. Act 47 of 1963, s. 18; *See Narain Patro* v. *Aukhoy Narain Manna*, 12 C., 152, 155 (1885).
49. *See* Fry, *op. cit.*, Chs. XIV & XV, *passim*.
50. As to agreements on new terms, *see* Fry, *op. cit.*, § 1031, *et seq.*

CENTRAL LIBRARY

they purport to contract each to enter into a bond to *D* for Rs. 1,000. In a suit by *D*, to make *A*, *B* and *C* separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake ; that the intention was that they should give a joint-bond for Rs. 1,000. *D* can obtain the performance sought only with the variation thus set up. (*ii*) *A* sues *B* to compel Specific Performance of a contract in writing to buy a dwelling-house. *B* proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except, with the variation set up by *B*. (*iii*) *A* contracts in writing to let to *B* a wharf, together with a strip of *A's* land delineated in a map. Before signing the contract, *B* proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of *A's* land of the same dimensions, and to this *A* expressly assented. *B* the signed the written contract. *A* cannot obtain Specific Performance of the written contract, except with the variation set up by *B*. (*iv*) *A* and *B* enter into negotiations for the purpose of securing land to *B* for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on *B*. The contract so framed cannot be specifically enforced. (*v*) *A* contracts in writing to let a house to *B* for a certain term at the rent of Rs. 100 per month putting it first into tenantable repair. The house turns out to be not worth repairing, so, with *B's* consent, *A* pulls it down and erects a new house in its place : *B* contracting orally to pay rent at Rs. 120 per mensem. *B* then sues to enforce Specific Performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.[51]

(ix) Against whom contracts may be specifically enforced.—Except as otherwise provided by Chapter II of the Specific Relief Act, Specific Performance of a contract may be enforced against[52] :—

(*a*) either party thereto :

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.[53] Thus (*i*) *A* contracts to convey certain land to *B* by a particular day. *A* dies intestate before that day without having conveyed the land. *B* may compel *A's* heir or other representative in interest to perform the contract specifically. (*ii*) *A* contracts to sell certain land to *B* for Rs. 5,000. *A* afterwards conveys the land for Rs. 6,000 to *C*, who has notice of the original contract. *B* may enforce Specific Performance of the contract as against *C*. (*iii*) *A* contracts to sell land to *B* for Rs. 5,000. *B* takes possession of the land. Afterwards *A* sells it to *C* for Rs.6,000. *C* makes no enquiry of *B* relating to his interest in the land. *B's* possession is sufficient to affect *C* with notice of his interest, and he may enforce Specific Performance of the contract against *C*. (*iv*) *A* contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to *B*. Immediately after the contract, *A* dies intestate, and *C* takes out administration to his estate. *B* may enforce Specific

---

51. *See* Act 47 of 1963, s. 18.

52. *Ib.*, s. 19.

53. *See* Fry, *op. cit.*, §§ 211, 221, 241 ; *Kannan* v. *Krishnan*, 13 M., 329 (1889) ; *Chunder Kant Roy* v. *Krishna Sunder Roy*, 10 C., 710 (1884) ; *Gumani* v. *Ram Charan*, 1 A., 555 (1878).

CENTRAL LIBRARY

Performance of the contract against *C*. (*v*) *A* contracts to sell certain land to *B*. Before the completion of the contract, *A* becomes a lunatic and *C* is appointed his committee. *B* may specifically enforce the contract against *C*;

(*c*) any person claiming under a title which, though prior to the contract and known to the plantiff, might have been displaced by the defendant. Thus (*i*) *A*, the tenant-for-life of an estate, with remainder to *B*, in due exercise of power conferred by the settlement under which he is tenant-for life, contracts to sell the estate to *C*, who has notice of the settlement. Before the sale is completed *A* dies. *C* may enforce Specific Performance of the contract against *B*. (*ii*) *A* and *B* are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. *A* contracts to sell his moiety to *C* and dies. *C* may enforce Specific Performance of the contract against *B*;

(*d*) when a public Company has entered into a contract and subsequently becomes amalgamated with another public Company, the new Company which arises out of the amalgamation;

(*e*) when the promoters of a public Company have, before its incorporation, entered into a contract, the Company, provided that the Company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.[54]

(x) Against whom contracts cannot be specifically enforced.—Specific Performance of a contract cannot be enforced against a party thereto in any of the following cases:—(*a*) if the consideration to be received by him is so grossly inadequate[55] with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff; (*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; (*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise; Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced, if in other respects proper to be so enforced. Thus *A*, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to *B* of his testator's property. *B* cannot insist on the sale being completed. Again, *A* directs an auctioneer to sell certain land. *A* afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to *B*, who has no notice of the revocation. *B* cannot enforce Specific Performance of the agreement.

61. Injunctions in certain particular cases of contract or transfer of property.—So far the subject of Injunctions as affecting contract generally has been dealt with, but there are certain particular forms of contract, namely bank guarantee or account, and transfer of property which require separate comment.

---

54. Act 47 of 1963, s. 19; See *Imperial Ice Manufacturing Co., Ld.* v. *Munchershaw*, 13 B., 415 (1889).

55. *See* Fry, *op cit.*, Ch. VII, *passim*.

CENTRAL LIBRARY

namely, those connected with partnerships, Companies, clubs and societies, mortgages and leases.

The plaintiff brought a suit on the Original Side of the Bombay High Court along with an application for grant of a temporary injunction to restrain the appellant United Commercial Bank from recalling the amount paid to the plaintiff and asked for an *ex parte ad interim* injunction. It was held that bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and the seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit. In view of the banker's obligation under an irrevocable letter of credit to pay, his buyer-customer cannot instruct him not to pay. The opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods which imposes on the banker an absolute obligation to pay. The same consideration apply to a bank guarantee. The letter of credit sometimes resembles and is analogous to a contract of guarantee. The bank which gives a performance guarantee must honour that guarantee according to its terms.

No injunction could be granted under Order 39, Rules 1 & 2 of the 'C.P.C. unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bonafide contention between the parties or a serious question to be tried. The balance of convenience clearly lays in a written banking transactions to go forward. Further more the plaintiffs have failed to establish that they would be put to a irreparable loss unless an interim injunction was granted—*United Commercial Bank* v. *Bank of India & Ors.*, A.I.R. 1981 S.C. 1426.

The Judges who are asked, often at short notice and *ex parte*, to issue an an injunction restraining payment by a bank under an irrevocable letter of credit or performance bond or guarantee should ask whether there is any challenge to the validity of the letter, bond or guarantee itself. If there is not or if the challenge is not substantial, *prima facie* no injunction should be granted and the bank should be left free to honour its contractual obligation, although restrictions may well be imposed on the freedom of the beneficiary to deal with the money after he has received it. The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear, both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it discharged —[*Bolivinter Oil SA* v. *Chase Manhattan Bank & Ors.*, (1984)1 All E.R. 351].

The Court's power to grant an injunction to prevent the proceeds of crime being dissipated, that power can only be exercised where the asset in respect of which the injunction was sought could be identified as being or representing property which had been stolen or otherwise unlawfully obtained. But where some of the moneys had been paid into the defendants' trading bank accounts that had been obtained by unlawful means and since those moneys had been mixed with other moneys properly obtained by untainted trading activities, the balance in the bank accounts was incapable of separation into legitimate and

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

illegitimate elements. It was held that the plaintiff was not entitled to the injunction sought—[*Chief Constable of Hampshire* v. *A & Ors.*, (1984)2 All E.R. 385].

(i) **Injunctions between partners.**—Partnership is a relation which in various ways calls for the action of a Court of Equity ; as for the purposes of discovery, account, Specific Performance, and dissolution ; and in connection with some or all of these main objects, and in some instances without reference to any ulterior end, partnership is made the subject of Injunction.[56] The application of the doctrine of Specific Performance to partnerships is governed by the same rules as those which govern it in other cases.[57]

The Court will not, generally speaking, enforce a contract to enter into a partnership, whilst it remains executory. It will not, as a general rule, enforce Specific Performance of a contract to form and carry on a partnership ; nor will it in any case compel performance of a contract to enter into a partnership not for a definite term.[58] "The natural remedy for a breach of an agreement to enter into a partnership, is an action for damages ; and there exists only two classes of cases in which the Specific Performance of such an agreement has been decreed. (I) Where the parties have agreed to execute some formal instrument which would confer rights, which would not exist unless it was executed. *England* v. *Curling*[59] is a case of this kind.[60] Where the contract defines the terms of the partnership and there has been part-performance of the contract, the Court may specifically execute it by decreeing the parties to execute a proper deed, and, if necessary, by restraining any partner from carrying on business under the partnership style with other persons, and from publishing notice of dissolution.[61] "(II) Where there has been an agreement, which has come to an end, to carry on a joint adventure, and the decree that the agreement is a valid agreement, prefaced by the declaration that the contract ought to be specifically performed, is made merely as the foundation of a decree for an account. *Dale* v. *Hamilton*[62] is an instance of this class of cases."[63]

When, however, a partnership has been already entered into, the Court will restrain by Injunction one or more of its members from doing acts inconsistent with the terms of the partnership-agreement or (independently of any agreement)

---

56. Hilliard, *Inj.*, p. 465 *et seq.* See generally Kerr, *Inj.*, 6th ed Ch. XV ; Lindley on *Partnership*, (14th ed.) 580-586 ; Joyce's *Inj.*, 511 ; High, *Inj.*, Ch. XXIII ; Spelling's *Extraordinary Relief*, Ch. XIII.

57. *Virdachala Nattan* v. *Ramasvami Nayakan*, 1 Mad. H. C. R., 341 (1863).

58. *See* Fry on *Specific Performance*, §§ 843, 1540 ; *Scott* v. *Rayment*, L. R., 7 Eq., 112 ; Lindley on *Partnership*, (14th ed.) p. 536.

59. 8 Beav., 129.

60. *Virdachala Nattan* v. *Ramasvami Nayakan*, supra.

61. *See* Fry, *op. cit.*, § 1541.

62. 5 Ha., 369; s. c. on appeal, 2 Phil., 266.

63. *Virdachala Nattan* v. *Ramasvami Nayakan*, 1 Mad. H. C. R., 341, 347 (1863). The Court further observed : "From the earliest to the latest cases upon the subject, it will be found, we believe, that a Court of Equity has never made a decree for the specific performance generally of a partnership. In decreeing specific performance, the Court has always to consider whether it can enforce the whole of the agreement, and where it cannot do so, this peculiar relief will always be refused. Here it would be quite impossible for the Court

CENTRAL LIBRARY

with the duties of a partner. [64] A member of a joint Hindu family cannot maintain a suit for an account of the profits of a partnership which is alleged to be joint family property, and an award of his share in such profits when ascertained. But this rule of Hindu law does not prevent an Injunction being granted in cases in which one member of the family is prevented from taking part in the business of the firm. [65]

A distinction must be kept between executory and executed contracts, a familiar illustration of which occurs in the case of partnership-articles. The cases in which Courts of Equity give specific relief on partnership-articles, and they are many, are not cases of Specific Performance of executory contracts. Though the Court will not, generally speaking, enforce a contract to enter into a partnership, whilst it remains executory ; yet nevertheless when the partnership has been constituted, the Court will by Injunction enforce the performance of particular terms, though it may be incompetent to enforce all the terms. [66] The Courts will interfere by Injunction between parties where the conduct of the defendant, either by misapplying the money of the co-partnership or by doing acts tending to the waste or destruction of the partnership-property, or by exculding from the business a partner entitled to join in it or the like, is practically violating the partnership-contract. It will enjoin a party from doing any act to prevent the partnership being carried on according to the articles. This will sometimes be granted where the partnership is dissoluble at will, but always where it is a partnership for a definite period. [67] But the Court will not interfere in all cases of misconduct to grant an Injunction against one partner at the suit of another. Mere disagreements or quarrels arising from bad temper and improprieties of conduct are not a sufficient ground. Unless a partner excludes his co-partner or persists in violating partnership-articles of importance, or is conducting himself so grossly as to render it impossible for the business to be carried on in a proper manner, the Court will not interfere. [68] A Court will also restrain a person from holding out another as partner with him, without the authority of that other. [69]

Contracts for partnership may be illegal ; in which case the Court will not in any way interfere for the benefit of parties claiming under such contracts, or in favour of contracts for partnership tainted with fraud, hardship, or improper conduct. [70] Where the partnership is illegal no rights can be enforced by injunction under the agreement by which it has been constituted. [71]

A partner seeking an Injunction must show that he is able and willing to perform his own part of the agreement and has fulfilled the duties incumbent on himself. [72] However improper the conduct of his co-partner may have been, a

---

to compel the parties to carry out their own partnership relations ; a decree for a specific performance would therefore be a mere *brutum fulmen*."

64. Kerr, *Inj.*, 6th ed. p. 513 ; Lindley on *The Law of Partnership*, (14th ed.), p. 580.
65. *Ganpat* v. *Anaji*, 23 B., 144 (1898).
66. *See* Fry., *op. cit.*, §§ 843, 1545.
67. *Virdachala Nattan* v. *Ramasvami Nayakan*, 1 Mad. H. C. R., 341, 348 (1863).
68. Kerr, *Inj.*, 6th ed. p. 520 ; Lindley on *The Law of Partnership*, (14th ed.), p. 585.
69. Act 47 of 1963, s. 38 ; Lindley, *op. cit.*, 585.
70. *See* Fry, *op. cit.*, § 1543.
71. *Bhikaji Sabaji* v. *Bapu Saju*, 1 B., 550 (1877).
72. Lindley, *op. cit.*, 585 ; Kerr, *Inj.*, 6th ed. p. 521 ; *Smith* v. *Froment*, 3 Swanst., 330 ; *Court* v. *Harris*, T. & R., 524.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

partner may by his own acts, [73] or acquiescence, [74] debar himself of relief. For in this as in all other cases the applicant must come to the Court with clean hands.

The Court may grant relief either by means of the issue of an Injunction or the appointment of a Receiver or by the grant of both forms of relief. An Injunction only excludes from the management of the partnership-affairs the person against whom it is granted, whilst the appointment of a Receiver, which operates as an Injunction, excludes all the partners equally, the Court taking upon itself, through the Receiver, the management of the partnership-business. The Court will not appoint a Receiver unless it sees that there is an actual present dissolution arising from the acts of the parties or that it would dissolve the partnership at the hearing. [75] It therefore does not follow that because the Court will grant an Injunction it will also appoint a Receiver, or that because it refuses to appoint a Receiver it will also decline to interfere by Injunction. [76]

The latter relief may be granted : (*a*) without a view to dissolution ; or (*b*) pending and after dissolution.

(a) Without a view to dissolution.—An injunction will not be refused in partnership-cases simply because no dissolution is sought. To hold otherwise might have the result of enabling a person to compel his partner to submit to the alternative of dissolution or ruin by a continued violation of the partnership-contract. Anciently, however, Courts of Equity declined to interfere, except where dissolution was sought. But evident as it is that the necessity for applying for relief virtually imperils the success of a partnership enterprise, the jurisdiction to enjoin a partner from doing that which seriously interferes with the business, or which is a breach of the agreement, in a suit which does not seek dissolution, is now well established. [77] So Injunctions will be granted restraining the exclusion of partner or the committal of improper acts by a member of a partnership. Where the partnership is determinable at will, there is, it is said, [78] more difficulty in interfering if a dissolution is not sought, for supposing the Court to interfere, the defendant may immediately dissolve the partnership. But supposing him to do so, an Injunction will not necessarily be futile, inasmuch as so long as it continues in force, the defendant is rendered powerless for evil, and a notice by him to dissolve the partnership cannot, *per se*, operate as a dissolution of the Injunction. [79]

(b) Pending and after dissolution.—In an action instituted for the purpose of having a partnership dissolved, or of having an account taken after a partnership is dissolved, it has never been doubted that an Injunction will be granted to restrain one of the partners from doing any act which will impede the winding-up of the concern or damage the property of the firm. [80] In a suit brought by the representative of a deceased partner to wind up the partnership,

---

73. Ib., *Littlewood* v. *Caldwell*, 11 Price, 97 (where an Injunction was refused because the plaintiff had taken away the partnership-books).
74. *Glassington* v. *Thwaites*, 1 Sim & St., 125.
75. Joyce's *Inj.*, 512.
76. Lindley, *op. cit.*, 580 ; Kerr, *Inj.*, 6th ed. p. 522.
77. Lindley, *op. cit.*, 580 ; Spelling's *Extraordinary Relief*, § 587.
78. See *Peacock* v. *Peacock*, 16 Ves., 49 ; *Miles* v. *Thomas*, 9 Sim., 606.
79. Lindley, *op, cit.*, 582.
80. Lindley, *op. cit.*, 582-83 ; Kerr, *Inj.*, 6th ed. p. 516 ; High, *Inj.*, § 1342.

CENTRAL LIBRARY

an Injunction may be issued at the instance of the plaintiff against the surviving partner prohibiting him from collecting debts due to the firm ; [81] though leave may be given to apply for the recovery of debts which might become barred by limitation. [82] So after a dissolution the Court constantly interferes by Injunction to restrain breaches of special agreements entered into between the partners ; such for example as agreements not to carry on business, not to get in debts of the firm, not divulge a trade-secret and the like. [83] While the objections to the interference by Injunction are less strong after dissolution than before, yet even then some urgent and pressing necessity must be shown to induce the Court to sustain the Injunction. [84]

(ii) **Injunctions against Companies.**—An Injunction may be granted to restrain Companies [85] from the commission of illegal acts, or the violation of the duties which attach to the relation of shareholders and directors, *inter se*. The principles on which the Court interferes in restraining a Company from doing illegal acts are the same as those on which it interferes in other cases. If it is clear that there is a right and a violation of that right likely to result in serious injury, the Court will protect the right by Injunction. Acts on the part of a Company may be illegal either (*a*) as against the public, or (*b*) as against third parties, or (*c*) as against individual members of the Company, or as against the general body of the members, or they may be in violation of the duties which bind in Equity the Directors and shareholders. [86]

(b) Third parties.—In the first case the Court will not, as a general rule, entertain jurisdiction, unless it is clear that the interest of the public calls for its interference. [87] The Courts have an undoubted jurisdiction of restraining Corporations or Companies from acting in excess of their powers when such excess causes injury to an individual or a large or smaller portion of the public. [88] In the second case the complainant must show that the act prohibited has caused him some special injury beyond that which he may be supposed to sustain in common with the rest of the public by an infringement of the law. [89] If a Corporation or Public Company were to do or attempt to do any act in excess of their powers and such acts would be injurious to the rights of property of an individual, the latter has a right to the protection of the Court by Injunction or other appropriate relief. [90] A person or a body of persons having statutory authority for the construction of works should exercise their powers with ordinary care and skill and with some regard to the property and rights of others. Such powers are

---

81. *Shunmugam* v. *Moidin*, *post*; *Rajarathnam* v. *Shivalayammal*, 11 M., 103 (1887).

82. *Shunmugam* v. *Moidin*, 8 M., 229 (1884).

83. Lindley, *op. cit.*, 584, Kerr, *Inj.*, 6th ed. Ch. XVII. See Act IX of 1872 (Contract), § 27.

84. High, *Inj.*, § 1344.

85. *See* Act I of 1956.

86. Kerr, *Inj.*, 6th ed. Ch. XVII, *passim* ; High, *Inj.*, Ch. XX.

87. *Ib.*

88. *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 141 (1876).

89. Kerr, *Inj.*, 6th ed. Ch. XVII. As to the interest required to support the suit, see *Vaman* v. *Municipality of Sholapur*, 22 B., 646 (1897).

90. *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 142 (1876), cited in *Vaman* v. *Municipality of Sholapur*, 22 B., 651 (1897).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

granted on the condition—sometimes expressed and when not expressed always understood—that the undertakers of the work should do as little damage as possible in the exercise of their statutory powers. When the powers conferred by Statute are exceeded or abused, the remedy of a person injured in consequence is by action or suit and not by a proceeding for compensation under the Statute which has been so transgressed.[91] A simple contract-creditor cannot maintain an action to restrain a Company from dealing with their assets as they please, on the ground that they are diminishing the fund for the payment of debts.[92] In the third case the general rule is that the Court will not interfere between members of Companies for the purpose of enforcing alleged rights arising out of matters which are properly the subject of internal regulation.[93]

The Court will, however, interfere by Injunction in certain cases to control majorities, and so any shareholder can obtain the aid of the Court to prevent an act which is *ultra vires,* even though resolved upon by all the other shareholders. Further, the acts of a Company may be illegal as against an individual member of the Company and where such is the case, a shareholder may sue the Company to restrain an individual injury to himself. So an Injunction has been granted to restrain the improper insertion or continuance of a person's name on a Company's prospectus, or in the register of shareholders, the illegal forfeiture of share, the illegal suspension of a shareholder from his rights, the improper rejection of his vote and the like.[94] Companies formed for a special purpose are looked upon in Equity as analogous to a partnership and the members in their individual capacity are considered to have rights *inter se* analogous to those of partners *inter se.*[95] Any shareholder has a right to say that the business of the Company shall be carried on according to the agreement which united the shareholders and may restrain the Company from applying the common fund to any other purpose than the proper purposes of the concern in which he was induced to engage, and contracts not within the proper purposes of the Company are void.[96] So if the directors of a public Company are about to pay a dividend out of capital or borrowed money, or if the directors of a fire and life insurance Company are about to engage in marine insurances, any of the shareholders may sue for an Injunction to restrain them.[97] In this, as in all other cases, the conduct of the applicant or his delay and acquiescence may prove a bar to the grant of relief ;[98] and if a contract between two Companies is illegal the Court will not assist either of the parties in obtaining a collateral benefit which the agreement would give, or aid them in any manner which would promote the object of the agreement.[99] Contracts not within the proper purposes of the Company are void, though the doctrine of *ultra vires* will be reasonably applied so as not to exclude whatever may be fairly

---

91. *Gaekwar of Baroda* v. *Gandhi Kachrabhai Kasturchand*, 7 C. W. N., 393 (1903).
92. *Mills* v. *Buenos Ayres Co.*, 5 Ch. D., 821.
93. Kerr, *Inj.*, 6th ed. Ch. XVII ; but in particular cases of urgency, irreparable mischief and fraud the Court interfered.
94. Kerr, *Inj.*, 6th ed. Ch. XVII.
95. *Simpson* v. *Denison* 10 Ha., 51.
96. See Kerr, *Inj.*, 6th ed. Ch. XVII.
97. See *Vaman* v. *Municipality of Sholapur*, 22 B., 648 (1897) ; High, *Inj.*, c. 1224.
98. See Kerr, *Inj.*, 6th ed. Ch. XVII.
99. *Great Northern Railway Co.* v. *Eastern Counties Railway Co.*, 9 Ha., 306; *Richmond Waterworks Co.* v. *Vestry of Richmond*, 3 Ch. D., 98.

CENTRAL LIBRARY

regarded as incidental to, or consequential upon, those things which have been authorized.[1] An act, which is *ultra vires*, the Company being void, is incapable of ratification. But an act although it may be beyond the powers of the directors, may be capable of being adopted and confirmed at a meeting of the shareholders as a body, and, if so, the Court will not interfere until attempts have been made to take the sense of the general body of the shareholders on the matters in question.[2] Though the Court under certain circumstances might have the power of so framing an order for an Injunction as to produce the effect of cancelling the minutes of a resolution recorded in the books of a corporate body, yet it cannot order such body to pass and record a resolution dictated by the Court.[3]

The size of the defendant's shareholding and his motive in petitioning were irrelevant so long as he had sufficient ground. Furthermore, the investigation under section 164 of the Companies Act was a different remedy from a winding-up ; the investigation would not result in a winding up ; nor inhibit the company from disposing of its assets, nor, if there were a course oppressive conduct, prevent its continuance.

The company was entitled to interlocutory relief to prevent anticipated litigation if on the available evidence it could be said that presentation of a petition would *prima facie* be an abuse of process. The court should not interfere with what would otherwise be a legitimate petition unless there were sufficient *prima facie* evidence—[*Bryanston Finance Ltd* v. *Vries* (*2*), (1976) 1 All E.R. 25 (CA)].

(iii) **Injunctions against clubs, societies, castes, etc.**—A club is a voluntary association of a number of persons meeting together for purposes mainly social, each contributing a certain sum either to a common fund for the benefit of the members, or to a particular individual, namely, the proprietor for his own benefit.[4] A club as a body, has no position recognised in law,[5] and although frequently confounded with other voluntary associations, it is really an institution *sui generis*. The association to which it bears the closest resemblance is a partnership, though it is erroneous to treat it as such,[6] or as a Company,[7] or Corporation.[8] Clubs proper may further be distinguished from societies which

---

1. Kerr, *Inj.*, 6th ed. Ch. XVII. No specific performance or Injunction can be granted of or in respect of a contract made by or on behalf of a Corporation or public Company created for special purposes or by the promoters of such Company, which is in excess of its power. As to suits against Companies on account of contracts entered into by them or by their promoters, see Act 47 of 1963, s. 15(g), (h), s. 19(d), (e).

2. Kerr, *Inj.*, 6th ed. Ch. XVII ; Fry on *Specific Performance*, ss. 491, 492 *v. ante*.

3. *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 132 (176).

4. See, Halsbury's *Laws of England* (4th ed.) Vol. 6, para 201.

5. *Steele* v. *Gourley*, 3 T. R., 119.

6. *Fleming* v. *Hector*, 2 M. & W., 172. The distinction between a partnership and a member's club lies in the fact that the object of a partnership is the acquisition of a common profit, while that of a club is to secure social intercourse among the members.

7. In the matter of the *St. James' Club*, 2 D. M. & G., 383 ; In re *London Marine Association*, L.R., 8 Eq., 176 ; *Steele* v. *Gourley*, supra. There may however be a club Company : Wertheimer, 8-10.

8. *Steele* v. *Gourley*, supra.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

have been made subject to statutory rules, such as those dealt with by Friendly Societies Acts. [9]

(a) Clubs and societies.—An agreement to become a member of a club is a contract between the candidate of the one part and the proprietor, or the whole body of members as the case may be, of the other part: and when a candidate has been elected and has had an opportunity of making himself acquainted with the rules of the club, his relations therewith will depend absolutely upon the terms of such rules. [10] Persons who have become members of a members' club would appear to be entitled in equal proportions to all the property of the club, in proprietary clubs, such property being vested in the proprietor. [11] The foundation of the jurisdiction of the Courts to prevent a member of a voluntary association from being improperly expelled is the right of property vested in such member of which he would be deprived by such expulsion. [12] The Courts in England have no jurisdiction to decide upon the rights of persons to associate together when the association possesses no property. [13] But in this country the position of non-voluntary associations, such as caste-unions, has to be considered. Both the English and Hindu law, however, distinguished between interference for the protection of property, liberty, security and reputation, and interference in matters of a purely social nature. So one person cannot be compelled to entertain another. Exclusion from mere social privileges of this kind gives no cause of action. Thus where a person sued for a decree declaratory of his right to the membership of a *samaj* (society), upon the allegation that the other members had excluded him from the *samaj* by their refusal to eat with him, it was *held* that as such exclusion neither deprived him of caste, nor affected any right of property, it was not cognizable by the Civil Court. and that even where rights of property are involved in the membership of societies or associations, yet if the main object of the association be of a social character, the members thereof are the sole judges whether a particular individual has so conducted himself as to entitle him to continue to be a member of the body. [14]

---

9. As to Acts relating to Societies in India, see Acts I of 1880 (Religious Societies), XXI of 1860 (Literary, Scientific and Charitable).

10. See *Lyttleton* v. *Blackburn*, 45 L. J., Ch., 223 ; *Innes* v. *Wylie*, 1 C. & K., 264.

11. See *Jagannath Churn* v. *Akali Dossia*, 21 C., 461, 470 (1893).

12. *Rigby* v. *Connel*, 14 Ch. D., 482 ; *Innes* v. *Wylie*, 1 C. & K., 262 ; *Neale* v. *Denman*, 18 Eq., 135 ; *Baird* v. *Wells*, 44 Ch. D., 661, 675.

13. *Rigby* v. *Connel*, supra, which was the case of a trade-union and where Sir George Jessel, M. R., says : "Persons, and many persons, do associate together, without any property in common at all. A dozen people may agree to meet and play whilst at each other's houses for a certain period, and if eleven of them refuse to associate with the twelfth any longer, I am not aware that there is any jurisdiction in any Court of Justice in this country to interfere." Therefore the Courts have no jurisdiction to interfere where a member of a proprietary club has been expelled. See *Lyttleton* v. *Blackburn*, 45 L.J., Ch., 219. The remedy of the aggrieved member being an action for damages, *Baird* v. *Wells*, 44 Ch. D., 661, 675.

14. *Sudharam Patar* v. *Sudharam*, 3 B.L.R., a. c. j., 91 ; s.c. 11 W.R., 457 (1869), in which many of the earlier cases will be found cited. In this case the exclusion was not from caste, but only from a *somaj* or association of a purely social nature, and is, therefore, distinguishable from the cases relating to caste-union and religious fraternities. *Jagannath*

CENTRAL LIBRARY

In the case of voluntary associations the action of the members is subject to the superintendence of the Court according to the following rules :—

The Courts will not, as a general rule, sit as Courts of Appeal from the decision of the members of clubs or other associations duly assembled. But it will interfere by Injunction to restrain the expulsion of and to reinstate, a member in the following cases. [15]

(1) Where the action of the committee or the general meeting was not authorized by any rule, that is, where it was irregular, and not within the terms of any rule of the club or association. The rules of the club must be observed, and the formalities necessary for the expulsion of a member must be strictly complied with. [16]

(2) Where what has been done, though it is within the rules of the club, is contrary to natural justice. Thus natural justice requires that where the conduct of a member is impugned, notice should be given to him that his conduct is about to be enquired into and that he should have an opportunity of stating his case and defending his conduct. A resolution passed without notice based upon *ex parte* evidence is void, and the Court will restrain a club by Injunction from interfering with a member's rights by virtue of such a resolution. [17]

(3) Where, although in accordance with the rules of the club, the proceedings were not in the *bona fide* exercise of the powers given by the rule, but fraudulent and malicious. [18]

In other cases the Courts will not interfere. When the committee or general meeting has done all that the rules require, and has not acted contrary

---

Churn v. *Akali Dossia*, 21 C., 470 (1893). See also *Raghunath Damodhar* v. *Janardhan Gopal*, 15 B., 599 (1891) ; where the Court refused to interfere : the rule in question being a mere sumptuary rule and the question in suit a caste-question unconnected with property or legal right.

15. *Baird* v. *Wells*, 44 Ch. D., 670 (1890); *Gompertz* v. *Goldingham*, 9 M., 321 (1886) ; *Jagannath Churn* v. *Akali Dossia*, 21 C., 461, 470, 471 (1893) ; Wertheimer, *op. cit.*, 110 ; Kerr, *Inj.*, 6th ed. p. 584.

16. *Dawkins* v. *Antrobus*, 17 Ch. D., 615 ; *Labouchere* v. *Lord Wharncliffe*, 13 Ch. D., 346 ; *Baird* v. *Wells*, 44 Ch. D., 670, 673.

17. *Baird* v. *Wells*, 44 Ch. D., 670 ; *Fisher* v. *Keane*, 11 Ch. D., 353 ; *Innes* v. *Wylie*, 1 C. & K., 257, 263; *Dawkins* v. *Antrobus*, 17 Ch. D., 615; *Andrews* v. *Salmon*, (1888), W.N., 102 ; *Seaton* v. *Gould*, 5 T.R., 309 ; *Buchanan* v. *Rucker*, 1 Camp., 66. The rule expressed in the maxim *audi alteram partem* "is not confined to the conduct of strictly legal tribunals (as to which see *In re Hammersmith Rent Charge*, 4 Exch., 96, 97) ; but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals." *Wood* v. *Wood*, L.R., 9 Ex., 190, 196; *Russell* v. *Russell*, 14 Ch. D., 471 ; *Gompertz* v. *Goldingham*, 9 M., 321 (1886) ; *The Advocate-General of Bombay* v. *David Haim Devaker*, 11 B., 185, 195, 196 (1886), and cases there collected.

18. *Dawkins* v. *Antrobus*, 17 Ch. D., 623 ; *Baird* v. *Wells*, 44 Ch. D., 670 ; *Labouchere* v. *Lord Wharncliffe*, 13 Ch. D., 352 ; *Seaton* v. *Gould*, 5 T. R., 309 ; *Tantussi* v. *Molli*, 2 T. R., 731 ; *Hopkinson* v. *Marquis of Exeter*, L.R., 5 Eq., 63 ; *The Advocate-General of Bombay* v. *David Haim Devaker*, 11 B., 185, 195 (1886).

CENTRAL LIBRARY

to natural justice, then, unless there is proof of malice, the Courts will not interfere, even though, as a matter of fact, the decision was wrong.[19]

In the case of a community which is a private and voluntary religious society resting upon a consensual basis (such as the members of the Beni-Israelite community worshipping at a synagogue in Bombay) the members may make rules for themselves and may constitute a tribunal to enforce the rules, and the decision of that tribunal is binding when it has acted within the scope of its authority and in a manner consonant with the general principle of justice. When the decision of a domestic tribunal has been arrived at *bonâ fide* the Court has no jurisdiction to interfere.[20] Such a community was, of course, not a caste, but as not only honorific distinctions were at stake, but also a share in the management of an endowment, and the right to an office of importance and authority, the Court was held to have jurisdiction.[21] As to the power of the Court to issue an Injunction restraining the President of the Legislative Council from putting a motion before the latter,[22] or restraining a person from sitting and voting as a Member of the Council,[23] *see* the cases noted below.

(b) Castes.—With regard to castes, it has been decided in a large number of cases that a suit for restoration to caste and for obtaining a declaration that the expulsion was not justified would lie in the Civil Courts.[24]

It has been held by the Bombay High Court that in the matter of expulsion from caste, the Courts treat caste-corporations like any other voluntary societies or clubs. If there is jurisdiction and the procedure is fairly conducted and *bonâ fide*, the action of the caste-corporation or club is upheld.[25] Where this is not the case, the Courts will interfere[26] to secure the rights of a member who has been wrongly excluded from caste. Therefore where the enquiry as to the conduct of

---

19. See the following cases where the expulsion was upheld by the Courts : *Hopkinson* v. *Marquis of Exeter*, L.R., 5 Eq., 63 ; *Richardson Gardner* v. *Freemantle*, ib., 68 ; *Lyttleton* v. *Blackburn*, 33 L. T., 164 ; *Dawkins* v. *Antrobus*, 17 Ch. D., 615 ; *Lambert* v. *Addison*, 46 L. T., 20 ; *Harrison* v. *The Marquis of Abergavenny*, 3 T. R., 625, 653 ; *Seaton* v. *Gould*, 5 T. R., 309.

20. *The Advocate-General of Bombay* v. *David Haim Devaker*, 11 B., 185, 194, 195 (1886).

21. *The Advocate-General of Bombay* v. *David Haim Devaker*, 11 B., 193, 194.

22. *Kumar Sankar Roy* v. *Cotton*, 40 C. L.J., 515 (1924).

23. *Bhupendra Nath* v. *Ranjit Singh*, 41 C., 384 (1913).

24. *Appaya* v. *Padappa*, 23 B., 122, 127 (1898), and cases there cited.

25. *Appaya* v. *Padappa*, supra, at pp. 122, 129 (1898).

26. See *Appaya* v. *Padappa*, supra, at pp. 125, 129, 130, and cases there cited, where it was held that is is only suits with regard to matters which affect the internal autonomy of the caste, and its social relations that have been held to be barred by that Regulation and similar enactments in other parts of India. So the Court will not interfere in club questions so as to impair the autonomy of the club. *Pragji Kalan* v. *Govind Gopal*, 11 B., 534, 536 (1887). As long as a caste in passing a rule confines the enforcement of it to social caste-sanctions and does not seek to deprive a man of property or legal rights for disobeying it, the Court has no jurisdiction to enquire into the nature of the rule. *Raghunath Damodhar* v. *Janardhan Gopal*, 15 B., 599 (1891). See also *Lalji Shamji* v. *Walji Wardhman*, 19 B., 507 (1895), cited *post*.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

the alleged offending member has been *ex parte* and without notice to him [27] and so contrary to natural justice ; or where the decision is contrary to the rules of the caste or has not been come to *bonâ fide* [28] the Court will interfere by Injunction. The Calcutta High Court have, however, held that the jurisdiction to interfere in cases of this kind is of a more extended character ; that the rules laid down in the English cases as to expulsion from clubs or *voluntary* associations which people are free to join or not, and where any one who joins may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules, are not applicable with regard to caste-unions or religious fraternities in India, to which people belong not of choice but of necessity, being born in their respective castes or sects, and the consequence of exclusion from which are far more serious and affects a person's status in a far greater degree than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of Justice, even though presided over by Judges of a different religious persuasion, against expulsion is much more needed than in clubs or voluntary associations. Cases of expulsion from them are therefore cognizable by the Civil Court. [29] And still more recently the Bombay High Court have held that if possible, for the reasons stated by the Judges who decided the case last cited, the Civil Courts have to be more careful in the matter of caste-expulsions than is necessary in the case of voluntary associations. [30]

In matters relating to the management of caste-property and the administration of its affairs, the majority of the caste has authority to control the minority. The Court does not decline to give effect to the expressed wishes of the majority of the caste as to the management and custody of caste-property, which the minority seek to set at naught, by reason of the suit involving a caste-question. But the Court will not by its decree enable the majority to make a tyrannical use of its power. It will not assist the majority to deprive without cause the minority of their right to use what is the common property of all, or give effect to a resolution passed in violation of the rules of natural justice, or of a directly confiscatory character. [31]

(iv) Injunction between mortgagor and mortgagee.—The rights of parties under a mortgage [32] being usually fixed and easily ascertainable by reference to its written terms, it is plain that except in cases of fraud or mistake in its

---

27. *Appaya* v. *Padappa,* supra, and cases there cited.

28. *Jagannath Churn* v. *Akali Dossia,* 21 C., 463, 470, 471 (1893), and cases cited in this and the preceding case.

29. *Jagannath Churn* v. *Akali Dossia,* 21 C., 463 (1893) [dissenting from *Advocate-General of Bombay v. Haim Devaker* 11 B., 185 (1886), which the learned Judges appear to treat as at variance with their decision. It is, however, to be observed that the Bombay case was not one relating to a caste but to a Beni-Israelite religious community. See also case cited in next note.]

30. *Appaya* v. *Padappa,* 23 B., 122, 129 (1898).

31. *Lalji Shamji* v. *Walji Wardhman,* 19 B., 507 (1895).

32. As to the law relating to mortgages, see Act IV of 1882 (Transfer of Property), Ch. IV.

33. Spelling, *op. cit.*, § 442. See also High, *Inj.*, Ch. VII ; Kerr, *Inj.* (6th ed.) Ch. XVI ; Hilliard, *Inj.*, Ch. XXX ; Joyce's *Doctrines,* 127 ; Joyce's *Inj.*, 189-201.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

inception or execution, or arising out of collateral matters connected with it, or fraudulent attempts to prevent and abuse the powers therein conferred, there is no room for Equitable interference. The legal right of a mortgagee in a valid mortgage to have his security preserved until the maturity of the mortgage indebtedness, and afterwards to enforce his claim by strict foreclosure, or by exercising directly or through a designated trustee, his power of sale conferred by the writing, will not be interfered with so long as no fraud or unfairness is imputable to him, whatever the resulting loss and hardship to the mortgagor.

Injunctions pertaining to mortgages may be on behalf of the mortgagor,[34] or on behalf of the mortgagee,[35] or concerning third parties,[36] or respecting waste of the mortgaged premises.[37]

(a) On behalf of mortgagor.—Courts of Equity are averse to interference with the legal rights of a mortgagee or with the ordinary remedies for the enforcement of those rights, but will sometimes interfere to restrain proceedings under a sale of mortgaged premises where such proceedings are against conscience and threaten irreparable injury.[38] As long as anything remains due on the mortgage-security, a mortgagee may pursue all his remedies concurrently, but there may be cases of fraud, or special contract, or other peculiar circumstances which will deprive a mortgagee of this right. But unless there be fraud, or special contract, a mortgagee will not be restrained from selling under a power of sale.[39] When a mortgage-deed giving the mortgagee a power of sale contains also a proviso that the remedies of the mortgagors, their heirs, administrators and assigns in respect of any breach of the clauses or provisions (relating to such sale) or of any impropriety or irregularity whatever in any such sale should be in damages, the Court will not grant an Injunction to restrain the mortgagee from selling the mortgaged property.[40] In the case of *Rhodes* v. *Buckland*,[41] the Court restrained a mortgagee, pending a suit to redeem, from transferring the legal estate or parting with the deeds. But this case is no authority for the proposition that a mortgagee cannot sell the mortgaged property under the terms of the mortgage-deed during the continuance of a suit for the redemption of the mortgage, and will not warrant the issue of an Injunction restraining such sale on the sole ground that, as a suit for redemption has been filed, matters ought to remain *in status quo* until the decision of the suit. In that case the Court did restrain the exercise of the power of sale; but the case was a peculiar one, and the person seeking to redeem was not the mortgagor, but a puisne incumbrancer claiming to be entitled to pay off a prior mortgage. As a general rule, when a power of sale has become absolute the exercise of the power cannot be suspended, by the filing of a bill to redeem.[42] If it could be so suspended, the mortgagee

---

34. High, *Inj.*, § 442.
35. *Ib.*, § 462.
36. *Ib.*, § 469.
37. *Ib.*, § 478.
38. *Ib.*, § 442.
39. Kerr, *Inj.*, (6th ed.) pp. 523-524; see Joyce's *Doctrines*, 127-131.
40. *Muncherji Furdonji Mehta* v. *Noor Mahomedbhoy Jairajbhoy Pirbhoy*, 17 B., 711 (1893); following *Prichard* v. *Wilson*, 10 Jur., N. S., 330.
41. 16 Beav., 212.
42. *Adams* v. *Scott*, 7. W.R. (Eng.), 213.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

might be deprived of his remedy and kept out of his money, for an indefinite time. The owner of the equity of redemption can only stay the sale *pendente lite* by paying the amount due into Court, or by giving *primâ facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the mortgage.[43] When a mortgagee has, in pursuance of a power of sale given to him under his instrument of mortgage, served the mortgagor with notice of his intention to exercise this power, the mortgagor is not entitled to file a suit for redemption, and then ask the Court for an Injunction restraining the mortgagee from exercising his power of sale, unless fraud is charged against the mortgagee. To grant such an Injunction would be to cancel one of the clauses of the deed to which both the parties had agreed, and to annul one of the chief securities on which persons advancing money on mortgage rely. It would, of course, be otherwise, if the notice of sale had been given by the mortgagee after the suit for redemption had been filed.

The mortgagor is entitled to have the sale of the property suspended only if he can show either that he has paid off the mortgage-lien, or that he has made a legal tender of the amount due which has been refused.[44] And where, upon the authority of the same case and on a rule for an Injunction restraining a sale by mortgagees of mortgaged property, it was argued that as the plaintiffs were willing to redeem and the defendants had refused to accept their offer and threatened to sell, the Court would restrain the sale : it was *held*, that it must be shown that the plaintiffs were willing and able and offered to redeem, as was the case in the decision cited, though not in this rule, that the Court would be very reluctant to interfere with a mortgagee's rights to sell on the mere chance of the plaintiffs being able to make arrangements to pay the amount due at some uncertain time, and that, as it was not shown that these conditions existed, the rule should upon these facts be discharged.[45]

(b) On behalf of mortgagee.—Secondly, Injunctions may be granted on behalf of mortgagees : as on behalf of puisne mortgagees for the purpose of protecting their rights in the mortgaged premises and for the preservation and security of their lien ; or as between mortgagees and judgment-creditors for the protection of the former ; or against the mortgagor. So the rule is well established that inadequacy of the mortgaged premises as a security coupled with insolvency of the mortgagor will warrant the appointment of a Receiver over the mortgaged property, and an Injunction restraining the mortgagor from any interference with such Receiver or with the property. And so upon principles analogous to those restraining waste by a mortgagor in possession in cases of real estate, a mortgagor of chattels may be restrained from removing the property beyond the reach of the mortgagee, or from placing it where it will not be forthcoming for the satisfaction of the debt.[46] The mortgagee of an equity of redemption may obtain an Injunction restraining the mortgagee or other person in possession of

---

43. *Jagjivan Nanabhai* v. *Shridhar Balkrishna Nagarkar*, 2 B., 252, 254 (1877), *per* Melvill, J.

44. *Jagjivan Nanabhai* v. *Shridhar Balkrishna*, 2 B., 252, 254 (1877), at p. 256, *per* Pinhey, J.

45. *Muncherji Furdoonji Mehta* v. *Noor Mahomedbhoy Jairajbhoy Pirbhoy*, 17 B., 711, 716, 717 (1893).

46. High, *Inj.*, §§ 462-468.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

the legal estate from paying to the mortgagor the surplus rents or moneys which remain after the satisfaction of his own claim. [47] And an equitable mortgagee by deposit of title-deeds may obtain an Injunction for protection of his security. [48]

(c) Third parties.—Thirdly, the Injunction may concern the right of third parties. [49] So on a bill by a judgment-creditor of a mortgagor, the Court granted an Injunction to restrain the mortgagees, who were about to sell under their power, from paying the surplus to the mortgagor. [50]

In the case cited below, [51] *A* mortgaged land to *B* as either agent or *benamidar for C*. *B* sued on the mortgage and obtained a decree. *C* then sued *A* and *B* for a declaration that he was entitled to the benefit of the decree and had the right to execute it, and for an Injunction restraining *A* from paying the money to *B*, and *B* from receiving the money from him. It was held that the plaintiff was entitled to the declaration, but not to the Injunction. [52]

(d) Waste.—Lastly, the Court has a clear jurisdiction to restrain the commission of waste by the mortgagor in possession, and the jurisdiction is exercised for the purpose of preventing such acts as would depreciate the value of the premises and render the security insufficient. The only difficulty hitherto has been in discovering what is meant by a sufficient security; and it would seem that the question which must be tried is, whether the property the mortgagee took as a security is sufficient in this sense—that the security is worth so much more than the money advanced that the act complained of is not to be considered as substantially impairing the value, which was the basis of the contract between the parties at the time that it was entered into. [53] In this country a security is insufficient unless the value of the mortgaged property exceeds by one-third or, if consisting of building, exceeds by one-half. the amount for the time being due on the mortgage. [54] Similarly a mortgagee-in-fee may be restrained from committing waste, and will be restrained from cutting timber, unless the security is defective. [55]

(e) Injunction between lessor and lessee.—The Transfer of Property Act (1882) deals with the subject of leases, [56] other than those for agricultural purposes. [57] It defines the rights and liabilities of lessors and lessees respectively

---

47. *Berney* v. *Sewell*, 1 J. & W., 647 ; *Parker* v. *Calcraft*, 6 M., 11.
48. *Whitbread* v. *Jordan*, 1 Y. & C., 303; *Meux* v. *Bell*, 7 Jur., 821.
49. High, *Inj.*, §§ 469-477.
50. *Thornton* v. *Finch*, 4 Giff., 515 ; Joyce's *Inj.*, 199.
51. *Sethurayar* v. *Shanmugam Pillai*, 21 M., 353 (1897).
52. On the ground that the Injunction was excluded by s. 56, cl. (b) of the (old) Specific Relief Act. See Sarkar's *Specific Relief* Act (13th ed.) s. 41.
53. Joyce's *Doctrine*, 130; High, *Inj.*, §§ 478-483.
54. Act IV of 1882, s. 66.
55. Joyce's *Doctrines*, 130. See generally as to Injunctions in respect of mortgages, *ib.*, 127-131 ; High, *Inj.*, Ch. VII ; Kerr, *Inj.*, (6th ed.) Ch. XVI ; Spelling's *Extraordinary Relief*, 363 *et seq.* ; Hilliard, *Inj.*, 673-694 ; Joyce's *Inj.*, 189-201. As to waste by mortgagees, see Act IV of 1882, s. 76 (*e*).
56. Act IV of 1882, Ch. V.
57. *Ib.*, s. 117 ; as to these latter leases, v. *post*, Ch. IX.

CENTRAL LIBRARY

in the absence of a contract or local usage to the contrary.[58] As a general rule, the relation of the parties is determined by the instrument of lease. The preventive jurisdiction of Equity is freely exercised for the prevention of the violation of negative or restrictive covenants annexed to leases, thus in effect enforcing against the tenant a specific performance of the contract for the benefit of the lessor. Relief by Injunction may also be invoked for the protection of the rights of the tenant. The principles upon which relief by Injunction is given in such cases have been dealt with in the preceding pages of this Chapter, and it is not necessary to state again principles which, being of general application, apply as much to contracts annexed to leases as to all other contracts. Frequent instances of the exercise of injunctive jurisdiction in tort may be found in the case of the issue of Injunctions for the prevention of waste by the tenant, which will be found fully dealt with hereafter in Chapter IX. Courts of Equity have shown a marked reluctance to interfere by Injunction with legal proceedings instituted by a landlord for the eviction of the tenant in conformity with the accustomed procedure for such purpose in the absence of any elements of fraud or other special equities warranting relief.[59] A suit by a lessor for an Injunction restraining the lessees from interfering with the plaintiffs' right reserved by the lease to enter upon the land demised and cut and take away certain trees was held to be governed by the Limitation Act.[60] As to Injunction against receiving *malikana* dues, see case cited.[61]

It is a fundamental principle that possession should *prima facie* be protected. Once a person is in possession he is not to be dispossessed otherwise than by legal means. This is part of the rule of law. To some extent even a trespasser or wrong doer is protected. In doubtful cases it is better to maintain the *status quo*. Injunction order issued to the limited extent that the plaintiff should not be dispossessed except by operation of law and no further—*Shakuntala* v. *Hira Nand Sharma & ors.*, A.I.R. 1986 Del. 27.

After expiry of the lease tenant holding over possession cannot be dispossessed by the Landlord/Lessor by force. An application for injunction against such dispossession is maintainable. Relief can be moulded when it flows from the relief originally claimed in the suit claiming renewal of lease—*Patil Exhibitors (Pvt) Ltd.* v. *Corporation of the City of Bangalore*, A.I.R. 1986 Kant. 194.

(f) **Injunction between donor and donee.**—In the case cited it was held that where a gift of immovable property requires registration for its validity, it is open to the donor to revoke the gift before its registration ; and that if the donee refuses to hand back the document, the donor can obtain an Injunction restraining the donee from registering the document.[62]

62. Injunctions in cases of trust or other fiduciary relations.—Under this important head of Equity jurisdiction may be considered *firstly*, Injunctions against trustees generally, whether holding upon express, implied or constructive

---

58. *Ib.*, s. 108.

59. High, *Inj.*, s. 432. See further as to the rights of landlord and tenant, Ch. IX, *post*.

60. *Waziran* v. *Babu Lal*, 26 A., 391 (1904).

61. *Muhamad* v. *Narain Das*, 37 A., 423 (1915).

62. *Subra Rama* v. *Venkat Subra*, 48 B., 435 (1924).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

trusts. Specific mention is also made under this head of voluntary settlements, confidential communications, trade-secrets, and Injunctions against the publication of letters, lectures or other unpublished matter, and trusts attaching to articles in the custody of agents; *secondly*, Injunctions against executors; and, *lastly*, Injunctions against Corporations, in which the jurisdiction rests upon trust, will be considered.

(i) Injunctions against trustees.—Where the defendant is trustee of property for the plaintiff and invades or threatens to invade the plaintiff's right to, or enjoyment of, the property, the Court may grant an Injunction.[63] The prohibition which exists against the grant of an Injunction, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, does not apply to cases of breach of trust.[64] The jurisdiction to grant an Injunction in cases of trust is peculiar in this, that such jurisdiction, whether in England[65] or this country,[66] rests not upon the irremediable nature of the mischief, but upon the breach of trust. In all cases of breach of trust, the plaintiff may have an Injunction irrespective of the question of damage. In cases other than breach of trust, it must be shown either that there is no standard for ascertaining the damage, or that pecuniary compensation is not an adequate remedy, or cannot be got, or that an Injunction is necessary to prevent a multiplicity of proceedings.[67] When obligations arise from contract, the Court is to be guided by the rules relating to Specific Performance.[68] So where the relation of trustees and *cestui que trust* exists between a corporation and one of its officers the Court will interfere to prevent a breach of trust but where a person was not a *cestui que trust* but a servant of trustees the Court refused an Injunction as it could not specifically enforce a contract of service.[69] The cases in which contracts may be specifically enforced are the same as those in which an Injunction may be granted, with this exception that in cases of tort the danger of multiplicity of proceedings is an additional ground for injunctive relief.[70] Specific Performance may be decreed when the act agreed to be done is in the performance, wholly or partly, of a trust.[71] The word 'trust' includes every species of express, implied, or constructive fiduciary ownership.[72] An Injunction may be granted where the defen-

---

63. *See* Act 47 of 1963, s. 38(3).
64. Act 47 of 1963, s. 41 (h); See Joyce's *Doctrines*, 45.
65. Kerr, *Inj.*, (6th ed), p. 506; Joyce's *Doctrines*, 45.
66. *See* Act 47 of 1963, s. 38(3)(a), s. 10(ii)(b).
67. *Ib*, s. 38(3).
68. *Ib*, s. 38(2).
69. *Ram Charan Bajpai* v. *Rakhal Das Mukherji*, 41 C., 19 (1914).
70. *Ib.*, ss. 10, 38.
71. [As to the distinction between specific performance strictly so called and the enforcement of trusts, *see* Fry's *Specific Performance*, §§ 38, 40 Nelson, 118.]
72. *See* s. 2(c) of Act 47 of 1963. An 'express' trust is a trust which is clearly expressed by the author thereof, whether verbally or by writing. 'An implied' trust is a trust which is founded on an unexpressed, but presumed, *i.e.*, implied intention of the party creating it. A 'constructive' trust is a trust which is raised by construction of Equity, without reference to any intention of the parties, either express or presumed, and although there should be no such intention of the parties at all. See, Hanbury & Maudsley's *Modern Equity*, (12th ed.) p. 72.

CENTRAL LIBRARY

dant is trustee of the property for the plaintiff.[73] The word 'trustee' includes every person holding expressly, by implication, or constructively, a fiduciary character.[74] An Injunction may, therefore, be granted against the breach of any trust, whether that trust be express or implied or of a constructive character only.[75] Private trusts, that is, trusts whose object or purpose is not of a public or charitable nature, are now, in the territories to which the Act extends,[76] regulated by the Indian Trusts Act, 1882, the third section of which defines a 'breach of trust' as a 'breach of any *duty* imposed on a trustee, as such, by any law for the time being in force.' Chapter III of that Act sets forth the duties and Chapter IV treats of the powers of trustees, whilst the Specific Relief Act enacts[77] that contracts made by trustees in breach of the former, or in excess of the latter cannot be specifically enforced and, therefore, no Injunction can be granted to prevent the breach of such a contract.[78]

The issue of Injunctions in matters of trust is an important branch of Equity jurisdiction. A trustee may not use the powers which the trust confers on him at law, except for the legitimate purposes of the trust. If he attempts to do so, the Court will restrain him by Injunction from making a wanton exercise of his legal powers.[79] In the exercise of its powers to enforce the proper performance of their duties, the Court may enjoin trustees from proceeding in disregard of the conditions necessary to the proper exercise of their authority or from an improper use of such authority. The rights of the *cestui que trust* will be protected by restraining the trustee from doing any act inimical to his duty as such. So an Injunction will be granted when necessary to prevent a trustee incumbering the trust-property by mortgage, conveyance, or contract, or in any other manner which would constitute a breach of the trust. Equity will not, however, confine its protecting powers to the party having the beneficial interest, but will, in a proper case, grant an Injunction in favour of the trustee to restrain his *cestui que trust*[80] or new trustee.[81] It is a principle of a Court of Equity that a trustee shall not be permitted to use the powers which the trust may confer upon him at law, except for the legitimate purposes of the trust ; and the Court will restrain him from doing so, and this although the plaintiff may have a remedy at law ;[82] and while time affords no sanction to establish breaches of trust, the Court will restrain the commission of acts in violation thereof.[83]

---

73. *Ib.*, s. 38(3)(a).
74. *Ib.*, s. 2(c).
75. See Spelling's *Extraordinary Relief*, §§ 561-570.
76. v. *ante*, *p.*
77. *See* Act 47 of 1963, s. 11(2).
78. *Ib.*, s. 41(e).
79. Kerr, *Inj.*, (6th ed.) p. 506. *See* Snell's *Principles of Equity* (28th ed.), pp. 281-282 ; Hanbury and Maudsley's *Modern Equity*, (12th ed.), p. 767.
80. Spelling, *op. cit.*, § 557.
81. Kerr, *Inj.*, (6th ed.), p. 508.
82. Joyce's *Doctrines*, 45 ; *Balls* v. *Strutt*, 1 Hare, 146 ; Act 47 of 1963, s. 41(h) ; *Ranga Pai* v. *Baba*, 20 M., 403 (1897).
83. Joyce's *Doctrines*, 45.

CENTRAL LIBRARY

So it has been the invariable practice when any act involving breach of trust is intended to be done, though not in its consequences irremediable, to restrain such act. So if *A*, a trustee for *B*, is about to make an imprudent sale of a small part of the trust-property, *B* may sue for an Injunction to restrain the sale, even though compensation in money would have afforded him adequate relief : [84] and if *A*, a trustee, threatens a breach of trust, his co-trustees, if any, should, and the beneficial owners may, sue for an Injunction to prevent the breach. [85] It would not be relevant to the present enquiry, nor possible without a review of the general law relating to trusts, to mention all the instances in which the Courts have interfered or may interfere in matters of trust. In all cases where a confidential relationship can be shown to exist, the Court fastens an obligation on the conscience of the party who has derived any confidential communication through that relationship, and will enforce it against him in the same manner as it enforces against a party, to whom a benefit is given, the obligation of performing a promise on the faith of which the benefit has been conferred. [86] Upon this principle persons to whom such confidential communications have been made, and persons into whose possession, or to whose knowledge documents have come in the course of their employment, whether as legal or medical advisers, agents, assistants, clerks and the like, will be restrained by Injunction from making them public or communicating their contents to a stranger in breach of the trust and confidence reposed in them. [87] In the case of solicitors, a distinction has been drawn between cases where the solicitor voluntarily makes a communication of what has come to his knowledge in the course of his professional employment, and cases where he is required to disclose what he knows by giving evidence in Court. In the one case the Court will, [88] and in the other case it will not [89] interfere by Injunction, the propriety of his being examined being left to the consideration of the Court before which he is to appear as a witness. With a further view to the protection of a client from the disclosure of confidential communications, the Court will not permit a solicitor who has been employed by one party to a suit to act for another party to the same suit, either in that suit or in a transaction which flows out of it and is clearly connected with it, against his former client. [90]

Similarly if a person who has a trade-secret employs others under a

---

84. See Joyce's *Doctrines*, 45.

85. *See* Act 47 of 1963, s. 38(3)(a),(b).

86. *Morison* v. *Moat*, 9 Ha., 255

87. Kerr, *Inj.*, (6th ed.), p. 487 ; Joyce's *Doctrines*, 138, 224. The protection does not, of course, extend to cases where a fraudulent transaction has come to the knowledge of a person in the course of his employment, since "an employer can have no property in iniquitous secrets." *Garside* v. *Outram*, 3 Jur., N. S., 40.

88. *Lewis* v. *Smith*, I Mac. & G., 417.

89. *Beer* v. *Ward*, Jacobs, 77. As to the privilege relating to professional communications, see the Indian Evidence Act (I of 1872), ss. 126-129. Sarkar's *Law of Evidence*, 13th Ed. The law relating to professional communications between solicitor and client, is (with the exception of the substitution of 'illegal' for 'criminal' purpose in s. 126) the same in India as in England. *Framji Bhicaji* v. *Mahansing Dhansing*, 18 B., 263 (1893).

90. *Little* v. *Kingswood Collieries Co.*, 20 Ch. D., 733. This principle does not extend to questions arising under the practice of retainer of counsel. *Baylis* v. *Grout*, 2 M. & K., 317. See generally Kerr, *Inj.*, (6th ed.) Ch. XI.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

contract, either express or implied, or under a duty, express or implied, those others may be restrained by Injunctions from disclosing the secret. [91]

Analogous cases may be found in the rules regulating the issue of Injunctions against the publication of letters [92] and other unpublished matter. The receiver of a letter has the right to the possession of it, but he has no right, subject to certain recognised qualifications, to publish it without consent of the writer. On the other hand, as the right to publish belongs to the writer, the receiver cannot prevent its publication. Should the receiver threaten to publish the letter, he may be restrained by Injunction from so doing, and the Court may order the letter to be destroyed. [93]

Similarly the publication of lectures may be restrained, when such publication is a violation of trust of confidence. [94] In the case of other unpublished manuscripts, drawings and the like the author and composer has an absolute property in his work before publication. He may prevent publication. He has a right to the first publication, and whoever deprives him of that privilege is guilty of a wrong which the Court will endeavour to restrain. In restraining by Injunction the publication of a manuscript or other unpublished matter, the Court exercises an original and independent jurisdiction, not for the protection of a merely legal right, but to prevent what in Equity the Court considers and treats as a wrong, whether arising from a violation of an unquestionable right or from a breach of contract or confidence. [95] The exclusive right of the author or composer ceases upon publication. After publication the right exists only by Statute under the name of copyright, and jurisdiction by interlocutory Injunction against the violation of copyright, is in aid of the legal right, and is founded upon the necessity of protecting the property from irreparable damage pending the trial of the right. [96]

Equity will, when there is a duty incumbent upon one occupying an ordinary relation as that of agent, to deliver a thing *in specie*, attach a trust to the article to compel such delivery and enjoin its transfer to another person than its owner. [97]

With regard to the parties who should sue for an Injunction in cases of

---

91. Kerr, *Inj.*, (6th ed.) pp. 491-492 ; Joyce's *Doctrines*, 224, 225 ; Spelling, *op. cit.*, s. 568 ; *Merryweather* v. *Moore* (1892), 2, Ch., 518 ; *Amber Size, Ltd.* v. *Menzil*, L.R. (1913), 2 Ch. 239 ; *Anton Piller K.G.* v. *Manufacturing Processes Ltd & Ors.*, (1976) 1 All E.R. 779.

92. It has, however, been said that the Court interferes to protect the vendor's right of property and not because letters are written in confidence : *Gee* v. *Pritchard*, 2 Swanst., 426 ; but see also Kerr, *Inj.*, (6th ed.) p. 388 ; Spelling, *op. cit.*, § 567.

93. See Kerr, *Inj.*, (6th ed.) p. 388. The application for an Injunction should be made without delay before defendant has incurred expense.

94. *Caird* v. *Sime*, 12 App. Ca., 326.

95. *Prince Albert* v. *Strange*, 1 Mac. & G., 42. See as to this *Merryweather* v. *Moore* (1892), 2 Ch., 522 ; and generally as to Injunctions in these cases : Kerr, *Inj.*, (6th ed.) p. 388.

96. See *post*, Ch.

97. Spelling, *op. cit.*, § 563 ; *Somerset* v. *Cookson*, 3 P. Wms., 389 ; *Arundel* v. *Phillips*, 10 Ves., 139 ; *Nutbrown* v. *Thornton*, 10 Ves., 163 ; *Fills* v. *Read*, 3 Ves., 163.

CENTRAL LIBRARY

breach of trust, either the beneficial owners or the co-trustees may so sue.[98] Where a person has a common interest with others in a trust-fund or trust-estate, he may sue on behalf of himself and the others for the protection of the property by Injunction.[99] With regard to suits against Companies and Corporations, see §§ 62(ii), 63(iii). In the case of the alleged breach of any express or constructive trusts created for public, charitable or religious purposes, the Advocate-General, or two or more persons having an interest in the trust, with his consent, may sue in respect of such breach of trust.[1] Though the protection and proper administration of trusts is a matter of great importance, great care should be exercised in the granting of interlocutory Injunctions against trustees, lest by tying their hands the trust-estate may be left without a representative. The trustee should not be divested of his trust, until he has had an opportunity of answering, except in a case of pressing necessity and imminent probability of great danger and detriment from delay. The charges should be specific and the writ will not be awarded in the first instance upon mere general charges of abuse and violation of trust.[2]

No suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property is barred by any length of time.[3] But a suit by trustees against their co-trustees praying for an Injunction to restrain the defendants from excluding them from management is not within the operation of the last mentioned section.[4]

(ii) Injunctions against executors and administrators.—Much of the former jurisdiction of Equity to control by Injunction and other Equitable remedies is now exercisable by the Court of Probate Jurisdiction. The Probate Division in common with the other Divisions of the High Court in England has power to grant Injunctions, and to appoint Receivers under and by virtue of the Judicature Act. And though other Divisions of the Court may also have powers in respect of a deceased's estate, yet applications which are properly made in the Probate Division will not, if made elsewhere, be encouraged.[5] In this country, in which the same Courts exercise concurrently the ordinary Civil and Testamentary and Intestate Jurisdictions, the power to grant Injunctions in these matters is, as is now the case in England, based upon Statute. The Equitable jurisdiction to interfere by Injunction is referable to the trust-relation which, notwithstanding the increase of legislation on the subject, executors and administrators still hold to all parties interested in the estates entrusted to them.[6] Persons entitled to relief by Injunction against legal representatives are those directly entitled to the bene-

---

98. *Vaman* v. *Municipality of Sholapur*, 22 B., 652 (1897) ; as to co-trustees, see *Ranga Pai* v. *Baba*, 20 M., 403 (1897).

99. Kerr, *Inj.*, (6th ed.), p. 508 : see Civ. Pr. Code s. 30.

1. Civ. Pr. Code, s. 92. As to private endowments, see *Brojomohun Doss* v. *Hurrolall Doss*, 5 C., 700 (1880).

2. Spelling's *Extraordinary Relief*, § 558.

3. Act 36 of 1963 Limitation Act, s. 10.

4. *Ranga Pai* v. *Baba*, 20 M., 398 (1897).

5. Spelling's *Extraordinary Relief*, §§ 571, 585.

6. Spelling, *op. cit.*, § 572.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ficial interest, either as heirs or devisees, in the estate in the actual charge of such legal representatives, or persons less directly interested as being creditors of the deceased's estate.

When a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representatives of the deceased. And when the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come into his hands and has not been duly disposed of.[7] Formerly there was doubt as to the meaning of the term 'legal representative' in the last Code of Civil Procedure, but it is now defined as meaning a person who in law represents the estate of a deceased person and as including any one who intermeddles with such estate.[8] The Court will restrain all breaches and abuses of trust with regard to the disposition of the assets. So if a legal representative, through misconduct or insolvency, is bringing the property of the deceased into danger, the Court may grant an Injunction to restrain him from getting in the assets,[9] and will otherwise interfere for the protection of the estate. The Court will not restrain a legal representative from parting with the assets, unless a case of past or probable misapplication of them has been made out.[10] Creditors will not as a general rule, be entitled to an Injunction except in the case of waste or mismanagement whereby payment of the indebtedness to them is imperilled. And an Injunction is properly granted against executors who refuse to distribute the estate rateably among the creditors and in accordance with the terms of the devise and are threatening to secure certain favoured creditors not entitled to preference.[11] There is nothing to prevent several creditors or legatees severally instituting actions for administration; but, as a general rule, a stay of proceedings will be directed when a decree for administration has been made in any such actions, inasmuch as such decree is for the benefit of all creditors who may all come in under it and receive payment of their debts in due course of administration.[12] If *A* in an administration-suit, to which a creditor *B* is not a party, obtains a decree for the administration of *C's* assets, and if *B* proceeds against *C's* estate for his debt, *A* may sue for an Injunction to restrain *B*.[13] The jurisdiction is not confined to those entitled to the beneficial interest in the trust-fund in charge of legal representatives, but will in proper cases be administered in their favour. Relief is as freely granted in favour of, as against legal representatives, where necessary for their protection in administering the estate.[14] So an Injunction has been granted before probate on the application

---

7. *See* Civ. Pr. Code, s. 50.
8. *Ib.*, s. 2, cl. 11.
9. Kerr, *Inj.*, (6th ed.), p. 504.
10. Kerr, *Inj.*, (6th ed.), p. 504.
11. *Elam* v. *Elam*, 72 Ga., 162 (Amer.) *Depau* v. *Moses*, 3 Johns., Ch., 349 (Amer.) cited in Spelling, *op. cit.*, § 465.
12. Spelling, *op. cit.*, § 582; *Soobul Chunder Law* v. *Russick Lall Mitter*, 15 C., 202 (1888).
13. *Lutcheemund Sett* v. *S. M. Komulmoney Dossee*, 1 Ind. Jur. N. S., 9 (1866). In the last-mentioned case, it has been held that the application was not properly entitled in the original proceeding in which the order for administration had been made.
14. Spelling, *op. cit.*, 573.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

of a person appointed executor to restrain another person appointed co-executor from intermeddling with the estate and improperly dealing with it before probate. [15] There is now no abatement by reason of the death of a party between the conclusion of a hearing and the pronouncing of a judgment. [16]

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator, shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties. [17] When there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them : Provided that executors who have not proved their testotor's will, and trustees, executors and administrators outside British India need not be made parties. [18] Unless the Court directs otherwise the husband of a married trustee. administratrix or executrix, shall not as such be a party to a suit by or against her. [19]

(iii) Injunctions against Corporations.—The jurisdiction of the Court to interfere by Injunction against the acts of public Corporations of whatever nature is based upon the relation of trust. A Corporation, like an individual, may dispose of its property, and the Court will not interfere, unless a trust and a breach of that trust is established. If corporate property be affected by a trust, the power and jurisdiction of the Court to enforce and execute the trust attaches equally as it does upon other property. [20] Public functionaries or bodies incorporated by Statute for a particular purpose or the promotion of a public benefit, may not exceed the jurisdiction which has been entrusted to them by the Legislature. So long as they strictly confine themselves within the limits of their jurisdiction, and proceed in the mode which the Legislature has pointed out, the Court will not interfere to see whether any regulation or alteration, which they make, is good or bad, [21] but if, under pretence of an authority which the law does give them to a certain extent, they go beyond the line of their authority and assume to themselves a power which the law does not give them, the Court no longer considers them as acting under the authority of their commission, but treats them as persons acting without legal authority. [22] In a later case an Injunction has been granted restraining the Municipality Commissioner of Bombay from demolishing a house, it being held that it was a question of fact whether the house was in a dangerous condition ; [23] and in another case a Municipality has been

---

15. In the goods of *Moore*, 13 P. D., 36.

16. Civ. Pr. Code, *O.* 22, *r.* 6 ; *Chetan Charan Das* v. *Balbhadra Das*, 21 A., 314 (1899) ; *Ramacharya* v. *Ananta Charya*, 21 B., 314 (1895) ; *Surendra Keshub* v. *Doorgasundery*, 19 C., 513 (1892).

17. *See* Civ. Pr. Code, *O.* 31.

18. *Ib.*, *O.* 31, *r.* 2.

19. *Ib.*, *O.* 31, *r.* 3.

20. Kerr, *Inj.*, (6th ed.), p. 532.

21. *Chunilal Maneklal* v. *Kripashankar Bhagranji* (1906,) 31 B., 37.

22. *Frewin* v. *Lewis*, 4 My. & Cr., 249, 254 ; 9 Sim., 66 ; Joyce's *Principles*, 24, 25 ; see High, *Inj.*, § 1308, *et seq.*, as to Injunctions against public officers.

23. *Lalbhai Tricamlal* v. *Municipality Commissioner of Bombay*, (1908) 33 B., 335.

CENTRAL LIBRARY

restrained (by a modified Injunction) from cutting off a water-supply granted under certain rules. [24]

Whether a public body has received by Statute a discretionary power and is laid under an obligation to do a particular thing, such as to levy and collect a rate, an Injunction cannot be granted by a Court so as to deprive such public body of the power of exercising its discretion or to prohibit it from discharging that obligation. [25] In the case of Corporations for charitable purposes, such as haspitals, free schools and the like, the Court has no jurisdiction to interfere with the visitorial power unless it finds a breach of trust ; but where there is a breach of trust the Court will interfere to see the trusts properly performed notwithstanding that there may be a general or special visitor. [26] A Municipal Corporation is considered to hold a similar relation to the citizens and tax-payers within its boundaries as that held by a private Corporation to its members ; that is, it occupies the relation of a trustee. As agents and trustees, those for the time occupying municipal offices may be called to account in Equity by various actions and restrained by Injunction from all breaches of trust and abuses of power. [27] In the case cited below [28] the Court observed as follows :—"There can, I think, be no doubt that if the Port Trustees or any other Corporation or public company in Bombay were to do or attempt to do any act in excess of their powers, as contained in the Charter or Legislative Act from which they derive their being, and such acts would be injurious to the rights of property of an individual, such individual would, on general principles, have a right to the protection of this Court by Injunction or other appropriate relief." So a suit will lie at the instance of individual tax-payers for an Injunction restraining a municipality from misapplying its funds, [29] as also to restrain by Injunction a municipality from levying an illegal tax. [30]

---

24. *Surat City Municipality* v. *Tyabji Danbhai*, 10 Bom. L.R., 622 (1908).

25. *The Municipal Commissioners for the Town of Madras* v. *Branson*, 3 M., 201 (1881). *See* Joyce's *Inj.*, 730 ; *Surat City Municipality* v. *Chunilal Maneklal* (1906), 30 B., 409.

26. Kerr, *Inj.*, (6th ed.), p. 568 ; as to municipal Corporations, see *ib.*, 571. Joyce's *Inj.*, 718 and *post* ; spiritual or ecclesiastical Corporations, Kerr, *Inj.*, (6th ed.), p. 580; quasi-Corporations aggregate, Joyce's *Principles*, 299 ; quasi-Corporations sole, Joyce's *Inj.*, 753 ; and as to clubs, societies and castes.

27. Spelling's *Extraordinary Relief*, § 676 ; High, *Inj.*, § 1236. See *New London* v. *Brainard*, 22 Conn., 552-6 (Amer.), cited in Joyce's *Inj.*, 731. Municipal Acts frequently expressly declare that municipal funds are to be held and applied by the municipalities as *trustees*. See *Vaman* v. *Municipality of Sholapur*, 22 B., 652 (1897). A municipal Corporation is bound by the acts of its officers. *Tullaram* v. *Corporation of Calcutta*, 7 C. W. N., 329 (1903).

28. *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 132, 142, cited with approval in *Vaman* v. *Municipality of Sholapur*, 22 B., 651 (1897).

29. *Vaman* v. *Municipality of Sholapur*, 22 B., 646 (1897) ; as to the misapplication of corporate funds, *see* Kerr, *Inj.*, (6th ed.), p. 573 *et seq.*

30. *The Surat City Municipality* v. *Ochhavaram Jamnadas*, 21 B., 630, 635 (1896) ; in this case the Injunction which had been granted by the first Court was dissolved and the suit dismissed upon the ground only that the tax was legally imposed. In the earlier case of *Hormasji Karsetji* v. *W. G. Pedder*, 12 Bom. H.C.R., 199 (1875), the Court appears to have doubted whether the Court ought to interfere by way of Injunction with the exercise of a

CENTRAL LIBRARY

But an Injunction will not be granted when equally efficacious relief can be otherwise obtained. So in the undermentioned case[31] the Surat City Municipality served, under section 82, clause 3, of the Bombay District Municipal Act (III of 1901), a notice of demand upon the plaintiff for house-tax due by him. The plaintiff instead of proceeding under section 86 of the Act instituted a suit in the Civil Court for an Injunction to restrain the Municipality from recovering the house-tax from him. The lower Courts rejected the claim on the ground that, as the plaintiff had omitted to appeal to a Magistrate under section 86 of the Act, his suit was premature. *Held*, that section 86 was permissive merely, and that it did not make it incumbent in every case upon a party complaining of an illegal levy of a tax by a Municipality to appeal against the action of the Municipality to a Magistrate before suing in a Civil Court. But *held*, also (confirming the decree), that the Injunction prayed for in this case could not be granted. By section 56 of the Specific Relief Act an Injunction cannot be granted where efficacious relief can be obtained by any other usual mode of proceeding. Section 86 of Bombay Act (III of 1901) gave a remedy to the plaintiff, but instead of resorting to it he filed this suit for Injunction. It was discretionary for a Court to grant an Injunction, and that discretion must be exercised judicially with extreme caution and only in very clear cases. This was not a case of that kind.

A contract made by, or on behalf of, a Corporation, or public Company created for special purposes which is in excess of its powers cannot be specifically enforced, and therefore no Injunction can be issued in respect of the breach of such a contract.

With regard to the parties in an action against a Corporation, the English rule is that, if there is a trust for public purposes, or the act complained of affects the revenues of the Corporation, the suit should be instituted by the Attorney-General at the instance of a relator or, if he declines to interfere, a certain number may file a bill on benefit of themselves and others making the Attorney-General defendant. If the trust be of a private nature the Attorney-General should not be a party.[32] In the case of public charities the Code of Civil Procedure provides for a suit at the instance of the Advocate-General or two or more persons interested in the trust, who have obtained his consent.[33] In other cases, where there are numerous parties, one party may sue or defend on behalf of or for the benefit of, all in the same interest.[34] It has further been held that as an individual shareholder or policyholder may sue a Company in the funds of which he is interested, an individual rate-payer, though his personal interest may be small but not less real, may sue a municipal Corporation to the fund of which he contributes and in the proper application of which he is

---

right or alleged right of officers of a municipal body to levy taxes and dues. It is, however, submitted that Injunction is the proper remedy to prevent the collection of an illegal tax (*see* Spelling's *Extraordinary Relief*, § 644, and Ch. XV *passim*, where the subject of Injunctions pertaining to taxation is fully dealt with)—at any rate where there are special circumstances attending the threatened injury to distinguish it from a mere trespass. High, *Inj.*, § 485.

31. *Chunilal* v. *Surat City Municipality*, 27 B., 403 (1903).
32. Kerr, *Inj.*, (6th ed.), p. 570.
33. Civ. Pr. Code, s. 92. Sarkar on *Civil Procedure* (7th ed.).
34. Civ. Pr. Code, *O.* 1, *r.* 8. See Sarkar on *Civil Procedure* (7th ed.).

CENTRAL LIBRARY

necessarily interested.[35] An Injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation whose personal action it seeks to restrain[36] and can be enforced by the attachment of the property of the Corporation or by imprisonment of the Directors or other principal officers, or by both attachment and imprisonment[37] and also (either in lieu of these processes or in addition to them) by having an act enjoined by an Injunction performed by someone appointed by the Court at the expense of the judgment-debtor.[38]

It has been held that delay in making an application to restrain a Corporation from applying the corporate funds to other purposes than the proper purposes of the Act is not material.[39]

---

35. *Vaman* v. *Municipality of Sholapur*, 22 B., 646 (1897), in which the plaintiff's suit was held not to fall within the prohibition of clause (*k*) of s. 56 of the Specific Relief Act.

36. Civ. Pr. Code, *O.* 29.

37. Civ. Pr. Code, *O.* 21, *r.* 32, cl. (2). See Sarkar on *Civil Procedure* (7th ed.).

38. *Ib.*

39. *Attorney-General* v. *Eastlake*, 11 Ha., 228; *Attorney-General* v. *Mayor* &c., *of Plymouth*, 1 W.R. (Eng.), 445.

CENTRAL LIBRARY

CHAPTER VII

INJUNCTIONS IN CASES OF TORT

Synopsis

63. Torts.
64. Who may sue and be sued in respect of Torts.
65. Remedies in case of Tort:
(*a*) Damages.
(*b*) Injunction.
66. Principles upon which an Injunction will be grated in cases of Tort.

63. Torts.—So far, the meaning of an Injunction as a form of relief, the principles upon which, and the practice according to which, it will be granted, together with the issue of Injunctions in the case of judicial proceedings, contract, transfer of property and trust, have been dealt with. There now remains for consideration only the question of the grant of this relief in cases of tort. It is not proposed, and it would indeed be beyond the scope of this work, to deal in detail with the substantive law of torts or (which would in effect amount to the same thing) to enumerate every particular instance in which an Injunction has been, or may be, granted in respect of the threatened commission of a tort. In India the general principles governing the grant of this form of relief, whether arising in contract or tort, have been codified by the Specific Relief Act. Whilst a correct appreciation of these principles is of the first importance, the cases to be found in the books under the various heads of tort are for the most part mere applications of those principles to the various circumstances which are the subject-matter of the general law of torts. The Chapters of this work, therefore, treating of Injunctions in cases of contract and tort do not purport to deal with all the instances in which an Injunction has been, or may be, granted against a threatened breach of contract or commission of tort. Such a treatment of the subject-matter would, in fact, involve a complete discussion both of the law of contract and tort together with a mere repetition of the fact that Injunctive relief is available wherever there is a threatened breach of an obligation imposed by that law. All that is really necessary is to ascertain *first*, whether under the substantive law relating to contract and tort there is an obligation or a legal duty, the breach of which is threatened : *secondly*, whether the general principles regulating the grant of Injunctive relief permit of such remedy under the particular circumstances of the case. Such instances as are given of cases in which an Injunction has been, or may be, issued are so given as illustrations merely of the practical working of those general principles which are the real subject-matter of this work.

There is no codified substantive law of torts in India.[1] Such law must, therefore, be sought for in the English and Indian case-law and text-books.[2]

---

1. In 1886 Sir Frederick Pollock completed a draft of a Civil Wrongs Bill for the Government of India which in certain places departs from the existing English Law and which will be found at p. 536 of his fourth edition of the *Law of Torts*. The draft, however, was not proceeded with.

2. *See* as to the general Law of Torts, Clerk and Lindsell on *Torts*, (15th edn);

CENTRAL LIBRARY

The position of the law of torts in the field of jurisprudence has been described as follows :—The members of a political society necessarily impinge upon the free action of each other. The law determines what amount of freedom of action each member may exercise. The rights of each, within the limits so determined, to the unfettered enjoyment of the benefits of social life, so far as they are enforceable by the State, are called his legal rights, and every other person in the community is under a legal duty to respect those rights by so ordering his conduct as to abstain from causing a violation of them. Every legal duty towards a person pre-supposes in him a privilege to invoke the law (*a*) to protect him against any breach of the legal duty ; or if the legal duty be violated, (*b*) to cause restitution to be made or compensation to be given to him.

A tort or injury is a violation of present right. The right involved in a tort is distinguished from that in a contract by its being in actual enjoyment at the time of the commission of the tort, while that of a contract is the right to the fulfilment of a promise made by some persons. Further, contractual rights are rights against determinate or known persons, while those with which torts are concerned are styled rights as against indeterminate persons, because it cannot be known beforehand who will violate them. It is a right *in rem,* whilst rights arising out of contract, transfer of property or trust, dealt with in Chapter VI, are rights *in personam* or rights of that nature.

Both rights may be violated, but in the case of a contract the violation is and must be by the other party to the contract, while in the case of a tort it may be by any member of the community or class of the community. The law of torts forms a portion of private law, which is concerned with questions as between man and man, as distinguished from public law, which is concerned with questions (*a*) between individuals and the community as in criminal law, or (*b*) between the community and another community as in the public international law. Law, again, whether public or private, consists of two portions, one of which, called substantive law, deals with rights and the other, called adjective law, with the methods by which substantive law is administered.[3] Injunctions have only a place in private law. The law of torts forms a part of the substantive portion of private law. The law relating to Injunctions forms a part of the adjective portion of private law or the law of procedure.

A tort has been theoretically defined to be the unauthorized prejudicial interference of some person by act or omission with a right *in rem* of another person ; and the conduct which brings about the prejudicial interference is said to be tortious.[4] Considered more practically and from the point of view of English jurisprudence, a tort is an act or omission giving rise, in virtue of the Common Law jurisdiction of the Courts, to a Civil remedy, which is not an action of contract.[5] It is commonly said to be an actionable wrong independent of contract.

Winfield and Jolowicz on *Torts* (12th ed.) ; Salmond and Heuston on *The Law of Torts* (18th ed.) ; Ramaswamy Iyer on *The Law of Torts* (8th ed.) Text-books dealing with specific branches of the law of torts are mentioned in succeeding pages.

3. Innes' *Principles of the Law of Torts,* pp. 1-5.

4. *Ib.,* p. 5.

5. For fuller definition given in Salmond and Heuston on *the Law of Torts* (18th ed.), P. 11; Williams and Happle: *Foundations of the The Law of Tort,* p. 1; Ramaswamy Iyer's *The Law of Torts,* 8th ed. p. 3.

CENTRAL LIBRARY

Torts may constitute : (*1*) *personal wrongs, viz.* (*a*) wrongs affecting the safety and freedom of the person, such as assault, false imprisonment and the like ; (*b*) wrongs affecting personal relations in the family, such as seduction, enticing away of servants ; (*c*) wrongs affecting reputation, such as slander and libel ; (*d*) wrongs affecting estate generally, such as deceit, slander of title, malicious prosecution. (*2*) *Wrongs to property, viz.*, (*a*) trespass, (*b*) waste, (*c*) interference with rights analogous to property, such as private franchise, patents, copyrights. (*3*) *Wrongs to persons, estate and property generally,* such as (*a*) nuisance, (*b*) negligence, (*c*) breach of absolute duties specially attached to the occupation of fixed property, to the ownership and custody of dangerous things, and to the exercise of certain public callings. [6]

64. Who may sue and be sued in respect of torts.—Generally speaking, every person who has been injured by the commission of a tort may maintain an action therefor. [7] An Injunction, however, cannot be granted, where the applicant has no personal interest in the matter. [8] The question, whether a right of action for a tort is assignable so as to entitle an assignee to sue in his own name, is one which apparently has never been decided, though presumably when the question arises, it will be held that the general rule is that it cannot be so assigned. [9] As to the effect produced on liability for a wrong by the death either of the persons wronged or the wrong-doer, the general rule expressed in the form of the maxim "*actio personalis moritur cum persona*" is that the right to sue and the liability to be sued for torts, ceases with the life of either party. [10] But the rule does not apply where the tort consists of : (*a*) The appropriation by the defendant of specific property or its proceeds or value belonging to the plaintiff; [11] (*b*) an injury committed by the deceased within one year before his death; [12] (*c*) or an injury which has occasioned pecuniary loss to the estate of a deceased committed within the same time; [13] (*d*) an injury causing the death of the deceased, if he or she leaves a wife, husband, parent or child. [14] Subsequently to the passing of the last mentioned Act, it was enacted by the Succession Act [15] that all demands and rights to prosecute or defend a proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault, or other *personal injuries* not causing the death of the party, and except also where,

---

6. See Salmond and Heuston on *The Law of Torts* (18th ed.) pp. 30-35 for Province and Function of Torts; Emergent Torts.

7. There are some exceptions; so an alien enemy can only sue with the permission of the Governor-General, Civ. Pr. Code, s. 83, and a Corporation cannot sue for a tort merely affecting its reputation. *Mayor of Manchester* v. *Williams* (1891), 1 Q. B. 94.

8. Act I of 1877, s. 56, cl. (*k*).

9. Salmond and Heuston, *op. cit.*, (18th ed.), pp. 565-566.

10. Ibid. pp. 416-417.

11. *Phillips* v. *Homfray*, 24 Ch. D., 439; Clerk and Lindsell, op. cit., para 22-4.

12. Act XII of 1855; *Gokul Chandra* v. *Basik Begum*, Mar., 244, which ruling, as regards an action for defamation, is not now law: see Act XXXIX of 1925, s. 306.

13. *Id.*; *Haridas Ramdas* v. *Ramdas Mathuradas*, 13 B., 677 (1889).

14. Act XIII of 1855.

15. Act XXXIX of 1925, s. 306.

CENTRAL LIBRARY

after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory. [16]

As to the persons who may be sued, generally speaking, every person who commits a tort not arising out of the performance of a contract is liable to be sued. [17] No person can be sued for a tort arising out of the performance of a contract, who would be incapable of entering into that contract. [18] When several persons join in committing a tort the general rule is that each is responsible for the injury sustained by their common act, the liability of the wrong-doer being as a general rule, joint and several. [19] Whoever commits a wrong is liable for it himself. It is no excuse that he was acting as an agent or servant on behalf and for the benefit of another. But that other may well be also liable ; and in many cases a person is held answerable for wrongs not committed by himself, [20] as when the wrong is committed by agents, servants or contractors. [21]

65. Remedies in case of tort.—The remedies, available in the case of tort committed or threatened, the compensation for the injury by the grant of damages, and Injunctions to prevent the commission or continuance of the tort.

(a) Damages.—As in cases of breach of contract, the ordinary remedy in case of tort lies in damages. There is no fixed rule for estimating damages in cases of injury to the person.

The damages in respect of injuries to property are to be estimated upon the basis of being compensatory for the deterioration in value caused by the wrongful act, and for all natural and necessary expenses incurred by reason of such act. Where any special damages have naturally and in sequence resulted from the tort, they may be recovered, but not otherwise, and the damages awarded must include prospective damages or the probable future injury resulting to the plaintiff from the tort. The Court may consider circumstances of aggravation and mitigation. Damages in actions of tort founded upon contract must be estimated in the same way as they are estimated in breach of contract. [22] The liability of damage of joint tort-feasors is several and joint. [23]

---

16. See as to the effect of death, marriage or insolvency of parties on pending suits, Civ. Pr. Code, *O.* 22 ; as to the effect of insolvency, see Clerk and Lindsell's *Torts*, 15th ed. 36, 37. A cause of action arising out of a statutory duty to the deceased survives to his executors ; *Peebles* v. *Oswaldtwistle Urban District Council* 2 Q. B. (1896), 159.

17. See Halsbury's *Laws of England*, (4th ed.) vol. 45, paras 1210-1233; Clerk & Lindsell on *Torts* (15th ed.) Ch. 2.

18. *Jennings* v. *Rundall*, 8 T. R., 335; *Burnard* v. *Haggis*, 14 C. B., N. S., 45.

19. See Halsbury's *Laws of England* (4th ed.) vol. 45, paras 1234, 1235. *Ganesh Singh* v. *Ram Raja*, 3 B. L. R., P. C., 44 (1869) ; but see *Krishna Mohun Bysack* v. *Kunjo Behari Bysack*, 9 C. L. R. 1, (1881).

20. So the circumstance that the defendant was acting under orders is no answer to a claim for an Injunction ; *Collard* v. *Marshall* (1892), 1 Ch., 575.

21. See *Clerk* v. *Lindsell*, 15th ed. para 2-55.

22. Underhill, 96-112 ; *see* also Alexander, 310 and Indian cases there cited ; Mayne on *Damages;* Collett's *Law of Torts and the Measure of Damages.*

23. *Ashan Ali* v. *Hafizah Ali*, AIR 1956 Nag. 146; *Bhupendra* v. *Rajeshwar*, 35 C. W. N. 367.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

A guest of the hotel fell on the slippery hotel drive and was injured. It was held that the proprietor of the hotel was under a duty towards the guest to take reasonable care to see that the drive was in all respects reasonably safe for the purpose for which it was to be used. But there was no implied warranty by the proprietor of the hotel that the drive was as safe as reasonable care and skill could make it and the mere fact that the part of the drive was slippery was not evidence of failure to take reasonable care. The guest action for damages was not allowed [*Bell* v. *Travco Hotels Ltd.*, (1953)1 All E.R. 638].

Exihibition of blue films in a dress-shop purchased by the defendant amounted to conversion into a "sex centre and cinema club" and an interlocutory injunction was granted on the ground that opening of the shop would be embarassing to the residence and source of danger to young people particularly the girls who might be exposed to indecent suggestions by outsiders. It was also held that causes of nuisance were not confined to cases of physical discomfort but also included interference with reasonable domestic enjoyment of their property [*Laws* v. *Florinplace Ltd.* (1981)1 All E.R. 659; see also Pollock & Mulla's *Contract and Specific Relief Act*, 10th ed. p. 1100]

(b) **Injunctions.**—In addition to the remedy by action for damages in respect of torts which have actually been committed, there is, in certain cases, an ancillary remedy by way of Injunction to prevent the *commission* of torts which are threatened or anticipated or in cases of continuing injuries to restrain their *continuance*. Specific relief will be granted by way of Injunction to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The term "obligation" includes *every* duty enforceable by law,[24] and, therefore, all those duties corresponding to rights *in rem* which are the subject-matter of the law of torts. Torts of all kinds may be restrained by Injunction.[25] Theoretically it would seem that the Court has jurisdiction even to issue an Injunction against the threatened commission of such a personal tort as an assault. But whether it would ever exercise that power is another question, since the proper remedy of a person who is under apprehension of an assault is to apply under the criminal law to have the defendant bound over to keep the peace.[26]

Injunctions are rarely granted in the case of personal wrongs. Injunctions have, however, been issued against the publications of libel,[27] and against slander of title.[28] The most frequent instances of the exercise of Injunctive jurisdiction

---

24. Therefore not merely moral, social, religious, *Bhudeb* v. *Kalachand*, 34 C. L. J., 315 (1921).

25. Act I of 1877, s. 54; as to temporary Injunctions, see *O.* 39, *rr.* 1 & 2, Civ. Pr. Code as amended by Act of 1976. If the decision in *Darab Kuar* v. *Gomti Kuar*, 22 A., 449 (1900), which holds that a temporary Injunction cannot be granted against an act of trespass means that s. 493 does not apply to cases of injury in tort, it is submitted it is erroneous. *See* also Clerk and Lindsell, (15th ed.) p. 279. Jassel, M. R. said that "the moment you find there is a legal principle, that a man is about to suffer a serious injury, and that there is no pretence for inflicting that injury upon him, it appears to me that the Court ought to interfere," in *Aslatt* v. *Corporation of Southampton*, 16 Ch. D., 148 (1880).

26. *See s.* 107, Cr. P. C.

27. Clerk and Lindsell, 15th ed. para 20-188. *Cf.* Act 47 of 1963, s. 41(h).

28. *See* Act 47 of 1963, s. 39.

CENTRAL LIBRARY

occur in the case of wrongs to property or to person and estate and property generally. And so Injunctions have been and are commonly granted against trespass,[29] waste,[30] disturbance of easements,[31] infringements of patents,[32] copyright,[33] piracy of trade-mark,[34] and nuisance.[35] The question of the grant of Injunctions in the case of defamation, and in these latter cases of wrongs affecting property, and to stay wrongful acts of a special nature is dealt with in subsequent Chapters of this work. In the case cited[36] it was held that no suit lay for maliciously obtaining a perpetual injunction which was subsequently dissolved on appeal.

66. Principles upon which an Injunction will be granted in cases of tort.—An Injunction will only be granted to prevent the breach of an obligation, that is a duty enforceable by law.[37] There must, therefore, be in the first place, a legal right and an invasion or threatened invasion of that right. It is not, however, in every case of injury or threatened injury that the Court will interfere by Injunction. The Court must be satisfied that the injury which is apprehended will be either continuous or frequently repeated or serious. In particular, an Injunction will not be granted to prevent on the ground of nuisance an act of which it is not reasonably clear that it will be a nuisance.[38] It is not, however, necessary that actual injury should have been suffered. When there is a practical certainty that substantial damage is imminent, the plaintiff may apply for an Injunction at once without waiting until it has actually happened.[39] In order to maintain an action at Common Law, actual damage had to be made out; but it was not necessary to show that in an action for an Injunction. It was and is sufficient to show that what has been done is likely to produce damage.[40] Where an act threatening danger to a person's land is such that injury will inevitably follow, a Court may grant a perpetual Injunction restraining the continuance of that act, even though no damage has actually occurred before institution of suit. And where actual injury has occurred subsequently to the filing of the plaint, the plaint may be amended so as to show the nature and extent of such injury.[41] Thus in the case last cited, the plaintiff and defendants owned adjoining lands.

---

29. See *ib.*, s. 38(3).
30. See *ib.*, s. 38(3).
31. See *ib.*, s. 39.
32. See *ib.*, s. 38.
33. See *ib.*, s. 38; Copinger and Skone James on *Copyribht*, 12th ed. para 620.
34. See Kerly's *Law of Trade Mark and Trade Names*, 10th ed. 15-59.
35. See Clerk and Lindsell on *Torts*, 15th ed. Ch. 7.
36. *Mohini Mohun* v. *Surendra Narayan*, 42 C., 550 (1914); *Basamma & Ors* v. *Peerappa*, A.I.R. 1982 Kant 9; *Bank of India & Ors* v. *Sital Chandra Das & Ors.*, A.I.R. 1986 Cal 313, Gattey on *Libel and Slander*, 8th ed. Ch. 35.
37. *See* Act 47 of 1963, ss. 38(3) (a), 2(a), *ante*, § 30.
38. *See* Act 47 of 1963, s. 41(f).
39. Clerk and Lindsell's *Torts*, (15th ed.) 7-01; and *Boyson* v. *Deans*, 22 M., 251 (1898).
40. *Mellin* v. *White*, (1894), 3 Ch., 281. See as to the observations made in this case on appeal (1895), A. C., 154; Clerk and Lindsell's *Torts*, 15th ed. paras. 7-07, 7-08; *Redland Brick Ltd.* v. *Morris*, (1969) 2 All E.R. 576. H.L.
41. *Bindubasini Chowdhrani* v. *Jahnabi Chowdhrani*, 24 C., 260 (1896).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Close to the boundary line the defendants dug a trench 110 feet long and 9 feet deep, the sides towards the bottom sloping in the direction of the plaintiff's land. The plaintiff sued for a perpetual Injunction restraining them from continuing to dig for the cost of filling up the excavation and for other relief. The defendants pleaded that they had a right to dig as they pleased on their own land, and that as the plaint did not allege any injury it disclosed no cause of action. The first Court held that no cause of action accrued until damage had actually occurred, and therefore dismissed the suit. Upon appeal to the High Court, the learned Judges, passed an order of remand stating *inter alia* that anything that happened subsequent to the institution of the suit could not supply a cause of action which did not exist before. But the Munsiff was wrong in law. A suit for Injunction may be a suit for preventive relief, and, under section 38 of the Specific Relief Act, a perpetual Injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The same section provides that when a defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual Injunction in certain specified cases. In the case of *Pattison* v. *Gilford* [42] the Master of the Rolls, speaking of the principles upon which a Court of Equity interferes when an Injunction is asked for, says: 'I take it that, in order to obtain an Injunction a plaintiff who complains, not that an act is an actual violation of his right, but that a threatened or intended act, if carried into effect, will be a violation of the right, must show that such will be an inevitable result. It will not do to say a violation of the right may be the result; the plaintiff must show that a violation will be the inevitable result.' In another case the Lord Chancellor say: 'I consider this Court has jurisdiction by Injunction to protect property from an act threatened, which, if completed, would give a right of action. I by no means say that in every such case an Injunction may be demanded as of right; but if the party applying is free from blame and promptly applies for relief and shows that by the threatened wrong his property would be so injured that an action for damages would be no adequate redress, an Injunction will be granted.' Whether the case is one in which an Injunction or any other relief should be granted, or what precise form the Injunction should take, are questions which the Courts, dealing with the facts, must decide with reference to the provisions of sections 37 and 38 of the Specific Relief Act. It may be that the plaintiff is not entitled to the relief which she claims or to relief in the particular form in which she claimed it, but that would not make the suit unmaintainable. No better proof of the inevitable consequence of an alleged act can be given than that the contemplated injury had actually occurred. [43]

Assuming that there has been an invasion or threatened invasion of a legal right, involving substantial damage, the applicant for an Injunction must have a personal interest in the matter. [44] Further, he must not have acquiesced in the wrong complained of. [45] The Court will consider whether the plaintiff by his acquiescence in the defendant's conduct has caused him to alter his position. A person should complain without delay before expenditure has been accrued and

---

42. L. R., 18 Eq., 259.

43. *Bindu Basini Chowdhrani* v. *Jahnabi Chowdhrani*, 24 C., 263-265 (1896), v. *ante*, p. 89.

44. Act 47 of 1963, s. 41(j).

45. *Ib.*, s. 41(g).

CENTRAL LIBRARY

the defendant's position has been altered. But, as there can be no acquiescence without knowledge, mere lapse of time between the defendant's commencing to incur the expenditure and the application for Injunction will be immaterial if the plaintiff did not become aware of the expenditure until after it was completed. Acquiescence, moreover, seems to be regarded as the subject of decree, it being said that a less degree of acquiescence will justify the refusal of an interlocutory Injunction than will justify the refusal of an Injunction at or after the hearing. [46] As a general rule, mere delay, not causing the defendant to alter his position, even though the plaintiff may have been perfectly aware of the infringement of his rights, is no ground for refusing an Injunction, unless it is so long as to bring the case within the Statute of Limitation. [47]

The conduct of the applicant or his agents must not have been such as to disentitle him to the assistance of the Court. [48] And an Injunction will not be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust. [49] The Court will consider the question of the balance of convenience, [50] and in the exercise of the wide discretion with which it is vested, the whole of the circumstances of the particular case. [51] Under the provisions of the Specific Relief Act [52] when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, [53] the Court may grant a perpetual Injunction in the following cases, namely:—(*a*) where the defendant is trustee of the property for the plaintiff; (*b*) where there exists no standard for ascertaining the damage caused or likely to be caused; (*c*) where pecuniary compensation would not afford adequate relief; (*d*) where it is probable that pecuniary compensation cannot be got; and (*e*) where the Injunction is necessary to prevent a multiplicity of judicial proceedings. [54] So an Injunction will be granted to restrain a bare trespass, if the Court is satisfied that it will, unless restrained be frequently repeated; the ground upon which relief is given being to prevent the plaintiff being put to the trouble and inconvenience of having to bring successive actions from time to time to recover a series of small damages. [55]

---

46. Clerk and Lindsell's *Torts*, 15th ed. paras 7-01, 7-03 and 7-11.

47. *Ib.*, v. *ante*, p. 105.

48. Act 47 of 1963, s. 41(i).

49. *Ib.*, cl. (h) v.

50. Clerk and Lindsell's *Torts*, 15th ed. para 7-11; *American Cyanamid* v. *Ethicon Ltd.*, [1975]1 All E.R. 504 H.L.

51. *See* generally as to the principles upon which an Injunction will be granted (Ch. II, *ante*). So the interests of third persons must be in some cases considered; as for instance where the granting of an Injunction would cause the stoppage of trade and the throwing out of work of a large number of work-people.

52. *See* Act 47 of 1963, s. 38.

53. The Act apparently does not contain the principles regulating the issue of Injunctions in cases other than those of injury to property, *e.g.*, purely personal wrongs, such as libel, though it is quite clear that it has jurisdiction to restrain acts not injurious to property.

54. *v. ante*, Ch. II, for a commentary on these rules and as to clause (*b*), see also *Sri Sadagapa* v. *Srimahant*, 22 M., 193 (1898).

55. Clerk and Lindsell's *Torts*, 15th ed. para 7-04. Collett's *Specific Relief Act*, 312, 313.

CENTRAL LIBRARY

The Injunction which will be granted may be temporary [56] or perpetual. [57] In either case the Injunction may, if necessary, be in a mandatory form. [58] The Court may grant damages either in substitution for, or in addition to, an Injunction. There may be a combination of damages and an Injunction, where the circumstances require it. [59] It is doubtful whether the Courts have jurisdiction to award damages in lieu of an Injunction where the injury is not yet committed, but threatened only, but apparently the inclination of the Court is in the direction of holding that it has not. [60]

The principle as to where and when the Court will grant injunction or refuse to grant the same in case of threatened invasion of legal right of a person has been neatly summarised in para. 932 of Halsbury's *Laws of England*, 4th ed. vol. 24 at p. 525 which is as follows:—

"Where a plaintiff has established that he has a right which has been infringed and that further infringement is threatened to a material extent, he is entitled to an injunction to restrain the threatened infringement upon the ordinary principles upon which the court acts in granting injunctions. If the plaintiff's right to relief rests mainly on damage which has not been actually suffered but is likely to accrue within a reasonable time, the court will take into consideration and grant an injunction. Therefore, although the plaintiff's legal right is not disputed, an injunction may be granted to restrain the commission of an apprehended or threatened act, on the ground that if the act is done it will violate the plaintiff's legal right, if he can show a strong probability that the apprehended mischief will in fact arise. However, no one can obtain a *quia timet* order by merely saying "timeo". He must aver and prove that what is going on is calculated to infringe his rights. The mere fact that the defendant denies any intention of committing the act complained of is not of itself a sufficient ground for refusing relief, but it is not sufficient ground for granting an injunction that, if there is no such intention, the injunction will do the defendant no harm. An injunction will not be granted if the defandant, even though he asserts his right to do the act, not only says that he has no present intention for doing it but undertakes to give reasonable and sufficient notice before attempting to do it. An injunction may also be refused where, on the defendant being served with the writ, the plaintiff is offered and may obtain all the relief that he seeks, and the offer is one which he ought to have accepted. The court will not restrain future acts of a wrongdoer unless it is plain that they will be of a wrongful nature. Where there seems to be no probability that the act complained of will be repeated, the court will sometimes make a declaration only, with liberty to apply for an injunction if necessary.

However, if the defendant claims and insists upon his right or gives distinct notice of his intention or threatens or intends to commit an act which, if com-

---

56. Civ. Pr., O. 39, *r.* 1; Act 47 of 1963, s. 37. A case of substantial damage must be made out: *Shepherd* c. *Trustees of Port of Bombay*, 1 B., 145 (1876).

57. Act 47 of 1963, ss. 36, 37.

58. The granting of an order in effect mandatory is an exercise of jurisdiction, which the Court is generally very unwilling to resort to on an interlocutory application; *Shepherd* v. *Trustees of Port of Bombay*, 1 B., 145 (1876).

59. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 77, 91 (1883); v. *ante*, p. 130; as to damages in substitution, see *Fritz* v. *Hobson*, 14 Ch. D., 548.

60. Clerk and Lindsell's *Torts*, 15th ed. para 1-110.

CENTRAL LIBRARY

mitted, would, in the court's opinion violate the plaintiff's right, an injunction will be granted."

The function of an appellate court in relation to a decision on the granting or refusal of an interlocutory injunction was considered by the House of Lords in *Hadmor Productions Ltd.* v. *Hamilton,* [1983]1 A.C. 191 and *Garden Cottage Foods Ltd.* v. *Milk Marketing Board,* [1984] A.C. 130. In the latter case it has been observed by Lord Diplock that the appellate court is entitled "to exercise an original discretion of its own only when it has come to the conclusion that the judge's exercise of his discretion was based on some misunderstanding of the law or of the evidence before him, or on an inference that a particular fact existed or did not exist, which, it was one that might legitimately have been drawn on evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it." (At p. 137). In *Francome* v. *Mirror Group Newspapers Ltd.,* [1984]2 All. E.R. 408 Sir John Donaldson has observed that "balance of convenience" is an unfortunate expression for injunction. The court should seek "a balance of justice, not of inconvenience".

Limitation.—Suits for compensation for torts are provided for in the schedule of the Limitation Act (36 of 1963) and are governed by Articles 72-91 of that Act, under which the period is two years. Torts to the person of reputation as well as suits for compensation for wronfgul distress or seizure of property are governed by the one year's rule. Most instances of torts to movable and immovable property are governed by the three years' rule. A similar period governs suits for compensation for injury caused by an Injunction wrongfully obtained. Thirty years is the period in the case of all suits bly the Government. As already explained, laches may affect the question of the grant of an interlocutory Injunction. No specific provision is made in the schedule of the Limitation Act for suits for a perpetual Injunction,[61] and the period of three years under Article 113 will be applicable to such a suit.[62] The doctrine, however, of laches being applicable to suits for Injunctions, the Courts may in the exercise of their discretion decline to make a decree, even if a much lesser time than three years has elapsed.

---

61. Except suits for Injunction to restrain waste, which are governed by Art. 89.

62. *Kanaka Sahai* v. *Muttu,* 13 M., 445 (1890). The Court in this case further held that, as the plaintiff might have sued for possession and so obtained equally efficacious relief, the exceptional form of relief by Injunction had been legally refused to him.

CENTRAL LIBRARY

CHAPTER VIII

INJUNCTIONS IN CASES OF DEFAMATION, MALICIOUS WORDS AND SLANDER OF TITLE

Synopsis

67. Personal Injuries.
68. Defamation:
(i) Libel.
(ii) Slander.
69. Malicious Words and Slander of Title.
70. Injunctions in cases of Defamation, Malicious Words and Slander of Title.

67. Personal Injuries.—Personal wrongs are such as affect the safety and freedom of the person; personal relations in the family; wrongs affecting reputation; and wrongs affecting estate generally, such as, amongst others, malicions words and slander of title.[1] As already observed[2] torts of all kind including therein personal wrongs, may be restrained by Injunction. So theoretically the Court has jurisdiction to restrain so personal a wrong as an assault, though whether it will exercise that jurisdiction is more than doubtful. In other words, though the jurisdiction exists in the case of all torts, that jurisdiction may not in fact be exercised owing to the peculiar character of, and circumstances attending, certain forms of tort. It may be that the wrong is of too slight a character, or is remediable by damages, or equally efficacious relief may be obtainable otherwise than by Injunction. Though, as a matter of fact, Injunctions in the case of perpetual wrongs have been generally confined to cases of defamation, malicious words and slander of title, the jurisdiction exists, and may be exercised in other cases.

68. Defamation.—The right of each man to the unimpaired possession of his reputation and good name is a legal right. Inasmuch as reputation depends upon opinion, and opinion in the main on the communication of thought and information from one man to another, he who directly communicates to the mind of another matter untrue and likely in the natural course of things substantially to disparage the reputation of a third person is, on the face of it, guilty of a legal wrong for which the remedy is an action of defamation for damages, and if the circumstances justify it, an Injunction.[3] Defamation may be embodied either in writing or in some other permanent form in which case it is called libel, or it may be otherwise published in some fugitive manner, when the tort committed is slander.

(i) **Libel.**—A libel is a false defamatory and malicious writing, picture, or the like, tending to injure the reputation of another.[4] Libels are generally in writing or printing, but this is not necessary; the defamatory matter may be conveyed in some other form. For instance, a statue, a caricature, an effigy.

---

1. v. *ante*, Ch. VII.
2. v. *ante*, Ch. VII.
3. Clerk and Lindsell's *Torts*, (15th ed.) para 20-118.
4. See Clerk and Lindsell on *Torts* (15th ed), para 20-02; Salmond and Heuston on *The Law of Torts* (18th ed.), p. 130.

CENTRAL LIBRARY

chalk marks on a wall, signs or pictures may constitute a libel.[5] A libel is of itself an infringement of a right, and no actual damage need be proved in order to sustain an action. The defendant, however, may plead justification, that is, the truth of the libel, because the law will not permit a man to recover damages in respect of an injury to character which he either does not, or ought not to possess; and he may also plead privilege and will be protected thereby in the absence of malice.[6] An action of libel will lie at the suit of an incorporated trading Company in respect of a libel calculated to injure its reputation in the way of its business without proof of special damage.[7]

A person can recover damages for libel provided he is able to show that publication of those convictions was malicious. The real issue to be tried is one of malice and the court will therefore apply the same principles as it would apply in a case where a defendant relies on a defence of qualified privilege, and will only intervene to grant an interlocutory injunction restraining publication where the evidence of malice is overwhelming [*Herbage* v. *Pressdram Ltd. & Ors.*, (1984)2 All E.R. 769].

(ii) Slander.—Slander is a false defamatory and malicious verbal statement tending to injure the reputation of another.[8] Slander unlike libel, is not of itself, according to English Law, an infringement of a right unless damage ensues, either actually or presumptively. Damage will be presumed where the slander imputes a criminal offence punishable by imprisonment; unfitness for society; or misconduct in, or want of some necessary qualification for, plaintiff's profession or trade or office of profit, or some conduct which might cause him to be deprived of an office of honour.[9] Upon the question whether the rule of English Law which requires proof of special damage to sustain an action for slander except in special cases, is applicable in this country there is still a conflict of authority.[10] The distinction which has been drawn between written and verbal defamation has been condemned by many Judges and authorities of eminence both in England and in India.[11] It has, however, now been settled by the Calcutta High Court that abusive and insulting language not amounting to defamation is not actionable.[12]

69. Malicious words and slander of title.—"Words cannot of themselves amount to a direct infringement of any right except that of reputation and

---

5. *Monson* v. *Tussauds, Limited* (1894), 1 Q. B., 692.

6. As to the issue of interlocutory Injunctions where privilege is pleaded, see *Quartz Hill, &c., Mining Co.* v. *Beall*, 20 Ch. D., 507; *Societe, &c., de Glaces* v. *Tilghman's &c., Co.*, 25 Ch. D., 1; *Poulett* v. *Chatto* (1887), W. N., 192, and where justification is pleaded, *Bonnard* v. *Perryman*, 1891, 2 Ch., 269; v. *post*.

7. *South Hetton Coal Company, Ld.* v. *North-Eastern News Association, Limited* (1894), 1 Q. B., 133.

8. Gatley on *Libel and Slander*, 8th ed. para 85. Slander may also be communicated by other sounds than words, as by hissing (*Gregory* v. *Brunswick*, 6 M. & G., 959) or by gestures (*Gutsole* v. *Mathers*, 1 M. & W., 501).

9. Gatley on *Libel and Slander*, 8th ed. para 144, 1320.

10. The Full Bench decision cited in the next note does not settle this question as the language in that case was held not to be defamatory.

11. *Girish Chunder Mitter* v. *Jatadhari Sadukhan*, F. B., 26 C., 653 (1899).

12. *Ib.*

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

cannot, therefore, apart from consequences, give a cause of action except when they are defamatory of the person complaining. They may, however, be the cause of damage to a man in the conduct of his affairs, and such damage may amount to a legal wrong. If property of any kind is for sale, and any one, without lawful motive, comes forward and falsely alleges that any incumbrances, charges or liabilities exist with respect to it, or otherwise impeaches or cuts down the right or capacity of the vendor to make a good conveyance, and in consequence the bargain goes off, an action lies, which is commonly known under the name of 'slander of title.' This is not properly an action for words spoken or for libel written or published, but an action on the case for special damage sustained by reason of the speaking or publication of the slander of the plaintiff's title."[13] So it may be slander of title to allege of any one that he is selling goods in infringement of a patent or copyright,[14] or to set up a false claim of lien,[15] or analogously to disparage the quality of a man's goods and thereby prevent their sale.[16]

Other false and malicious statements causing damage may also be actionable. So where a plaintiff lost her marriage through the defendant falsely and maliciously alleging that she was already married, the plaintiff was held to have a good cause of action;[17] as was also the case where the plaintiff, a shopkeeper, lost customers through a false and malicious allegation that his wife, who assisted in the business, had misconducted herself on the premises.[18] The effect of the authorities seems to be that a wrong is committed, and a corresponding remedy is given, whenever false statements maliciously made produce as a natural consequence damage which is capable of legal estimation.[19] Actions of this kind have in modern times generally arisen as between rival traders, in cases in which a dealer in a particular commodity has published a statement disparaging the quality of his rival's goods. In such cases an action will lie, if the statement is false, malicious and followed by damage. But when the only disparagement consists in the defendant's vaunting the superiority of his own goods, it has been doubted whether the action will lie, it being undesirable to turn the Courts into a machinery for advertising rival productions by obtaining judicial determination which of the two was the better.[20]

70. Injunctions in cases of defamation, malicious words and slander of title.—The Court of Chancery had formerly no power to grant Injunctions, except in cases where there was injury either actual or prospective to property.[21]

---

13. Clerk and Lindsell on *Torts*, 15th ed. para 19-02.

14. See *Wren* v. *Wield*, L. R., 4 Q. B., 730; *Dicks* v. *Brooks*, 15 Ch. D., 22; cf. 46 & 47 Vic., c. 57, s. 32.

15. *Green* v. *Button*, 2 C. M. & R., 707.

16. *Western Counties Manure Co.* v. *Lawes Chemical Manure Co.*, L. R., 9 Ex., 218; this principle seems to be assumed in *White* v. *Mellin* (1895), A. C., 154, though upon another ground doubts are in that case thrown upon the abovementioned decision; Clerk and Lindsell's *Torts*, 15th ed. paras 19-05, 19-17.

17. *Shephard* v. *Bateman*, 1 Sid., 79.

18. *Riding* v. *Smith*, 1 Ex. D., 91.

19. Clerk and Lindsell's *Torts*, 15th ed. paras 19-10 to 19-13.

20. *Ib.*, 546-553. See *White* v. *Mellin* (1895), A. C., 164, 172.

21. *Emperor of Austria* v. *Day*, 3 D. F. & J., 253. See Gatley on *Libel and Slander*, 8th ed. paras 1472 to 1475.

CENTRAL LIBRARY

An Injunction should therefore not have been had under the former procedure to restrain the publication of a libel, though publications as to which there was a jurisdiction to restrain would not be restrained the less because they happened also to be libellous.[22] Prior to the Common Law Procedure Act, 1854, neither Courts of Law nor Courts of Equity could issue Injunctions in cases of libel; not Courts of Equity, because cases of libel could not come before them; not Courts of Law because prior to 1854 they could not issue Injunctions at all.

The Common Law Procedure Act conferred on Courts of Common Law the power, if a fit case should arise, to grant Injunctions at any stage of a cause in all personal actions of contract or tort with no limitation as to defamation. This power was by the Judicature Act, 1873, conferred upon the Chancery Division of the High Court, representing the old Courts of Equity. Nevertheless, although the power had existed since 1854, there is no reported instance of its exercise until 1878. About the same time the Chancery Division began, and it has since continued to assert the jurisdiction of granting Injunctions on the interlocutory application of one of the parties to an action for libel. But that jurisdiction is now well established, and the Courts have jurisdiction to restrain by Injunction and even by an interlocutory Injunction the publication of a libel.[23]

Similarly in India, prior to the passing of the Specific Relief Act, it was held by the Bombay High Court that no Injunction will be granted to restrain the publication of a libel, and that an individual is not entitled to protection by way of Injunction against the act of a Corporation, though in cases of their powers, which affects that individual's character and reputation, whether private, professional or commercial, which he could not have been entitled to, had the act complained of been committed by an individual defendant, on the ground that the act in question was one which the Corporation had no power to do under the the instrument of incorporation.[24] Under the Specific Relief Act, 1963, the Court may grant an Injunction to restrain the publication of a libel even though it may be shown not to be injurious to the complainant's property.[25]

It has, however, been held in England that the jurisdiction to restrain libel is discretionary, and an interlocutory Injunction ought not to be granted except in the clearest cases—in cases in which if a jury did not find the matter complained of to be libellous, the Court would set aside the verdict as unreasonable.[26] And

---

22. *Prudential Assurance Co.* v. *Knott*, L. R., 10 Ch. App., 142 (1875); Kerr on *Injunction*, 2, 502; the Court of Chancery before the Judicature Act had power to intervene by Injunction, to protect property, but not to protect character; it had no power to try a libel. *Collard* v. *Marshall* (1892), 1 Ch., 577. The publications referred to are those made in breach or abuse of confidential relations, such as the publication of documents by solicitor's agents, clerks, &c; *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 140 (1876).

23. *Bonnard* v. *Perryman* (1891), 2 Ch., 269, 283; *Monson* v. *Tussauds, Limited* (1894), 1 Q. B., 692, 693. See Clerk and Lindsell on *Torts*, 15th ed. para 7-11 and Gatley on *Libel and Slander*, 8th ed. para 1472.

24. *Shepherd* v. *The Trustees of the Port of Bombay*, 1 B., 132 (1876); see also *ib.*, at p. 477.

25. Act 47 of 1963, s. 39.

26. *Bonnard* v. *Perryman* (1891), 2 Ch., 269 [approving *Coulson* v. *Coulson*, 3 Times L. R., 846; followed in *Collard* v. *Marshall* (1892), 1 Ch., 571; *Monson* v. *Tussauds, Limited* (1894), 1 Q. B., 671; *Oppenheim* v. *Mackenzie* (1898), 3 Cal. W. N., v. (notes).

CENTRAL LIBRARY

so an interlocutory Injunction was refused where the defendant swore that he would be able to justify the libel and the Court was not satisfied that he might not be able to do so; [27] and where the Court was not satisfied upon the affidavits that the defendant had not consented to the publication of the libel. [28]

The reasons assigned for the sparing exercise of the jurisdiction are twofold, *viz*:—(*a*) Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interlocutory Injunctions. The right of free speech is one which it is for the public interest that individuals should possess, and indeed that they should exercise without impediment so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. [29] (*b*) Because the questions of libel or no libel, and of the validity of a justification, if pleaded, are matters to be determined by the verdict of a jury. [30] Libel or no libel has in England since Fox's Act, whether in civil or criminal cases, been always regarded as essentially a question for the jury. Though that Act only applied to indictments and informations for libel, the practice under that Act had been followed in civil actions for libel, that the question of libel or no libel was for the jury. It was for the jury and not for the Court to construe the document and to say whether it was a libel or not. To justify the Court in granting an interlocutory Injunction it must come to a decision upon the question of libel or no libel before the jury decided whether it was a libel or not. Therefore the jurisdiction is of a delicate nature. [31]

It is clear that the second of the abovementioned grounds in restraint of the issue of interlocutory Injunctions in cases of libel has no force in this country, where there is no jury in civil cases.

The first of these grounds, moreover, is intimately connected with the second, in that in England the limits assignable to freedom of speech are those which have been laid down from time to time by juries in cases which have come before them. The exception also to the general rule has again in view the anticipated verdict of a jury. There does not therefore appear to be in this country so much, if any, reason for the limited exercise of the jurisdiction. In the case of every application for a temporary Injunction the Court has no doubt to act with caution, but it is submitted that there is no ground in reason why the Courts should be more cautious in restraining the commission of an alleged libel than in restraining any other alleged tort. And this is the more so, inasmuch as a tort to reputation is of as grave, if not of a graver character than torts to

---

27. *ib*. See *Crest Homes Ltd*. v. *Ascott*, (1975) Times, 5th Feb., C. A. ; *Halsbury's Laws of England*, (4th ed.), Vol. 24, para 984. See *Lucas-Box* v. *Associated Newspaper Group*, [1986]1 All E.R. 177 (In a libel action the defendant is to make clear what was the case which he sought to set up.)

28. *Monson* v. *Tussauds, Limited* (1894), 1 Q. B., 671.

29. *Bonnard* v. *Perryman* (1891), 2 Ch., 284, *per* Lord Coleridge, C. J.; see p. 287; *Collard* v. *Marshall* (1892), 1 Ch., 577.

30. *Bonnard* v. *Perryman* (1891)2 Ch., 285, *per* Kay, L. J. See also Gatley on *Libel & Slander*, 8th ed. para 1472.

31. *Monson* v. *Tussauds, Limited* (1894)1 Q. B., 693, 696, *per* Lopes, L. J.

CENTRAL LIBRARY

property only, which in a large number of cases are remediable by money compensation.

The Court will when necessary issue a mandatory injunction ordering the defamatory statements to be given up and destroyed. [32]

Where a defendant objected that in the publication of an alleged libel, he was merely acting as Secretary to the Committee of a certain trade-union and therefore that no Injunction ought to go against him, it was held to be clear that, if the plaintiffs had in other respects made out their case, the circumstance that the defendant was acting under the orders of others was no defence, as he was not on that account less responsible for his own wrongful acts. [33]

With regard to slander the Courts have jurisdiction, wherever such slander is actionable, to restrain its repetition. Inasmuch, however, as abusive and insulting language not amounting to defamation is not actionable, [34] no Injunction can issue in such a case. The Court has jurisdiction also to restrain slander of title or malicious statements which are in the nature of slander of title. It may thus restrain a person from making slanderous statements calculated to injure another man in his business, and though the jurisdiction extends to oral as well as written statements, great caution, it has been said, should be required as respects oral statements. [35]

The Court has power to restrain by Injunction on interlocutory motion the publication of placards and circulars containing statements injurious to trade, where the Court is satisfied upon the facts and evidence before it that such statements are false. [36]

If a statement complained of is a false and malicious statement about a plaintiff's goods to the disparagement of them, and, if that statement has caused injury to the plaintiff, an action for an Injunction will lie. [37] But there is no rule of Equity under which it may be said generally that the Court will restrain every publication of a false statement. And where special damage is the gist of a tort such damage must be alleged and found whether the action be for damages or an Injunction, otherwise a tort in the eye of the law would not be disclosed, and therefore the case would not be one for an Injunction. [38]

---

32. Act 47 of 1963, s. 39.
33. *Collard* v. *Marshall* (1892)1 Ch. 575.
34. *v. ante.*
35. Kerr, *Inj.*, (6th ed.) pp. 493-494.
36. *Collard* v. *Marshall* (1892)1 Ch., 571.
37. *Mellin* v. *White* (1894)3 Ch., 276, 280 (1895), A. C., 154. In this particular case none of the conditions were satisfied and the decision of the Appeal Court was reversed by the House of Lords. (1895) A. C. 154; v. *ante.*
38. *Mellin* v. *White,* (1895) A. C. 162, 163. See also Gatley on *Libel and Slander,* 8th ed. para 1474.

CENTRAL LIBRARY

CHAPTER IX

INJUNCTIONS AGAINST TRESPASS AND WASTE

Synopsis

71. Trespass.
72. Injunctions against Trespass.
73. Who may sue and be sued in respect of Trespass.
74. Waste.
75. Injunctions against Waste.
76. Against whom such Injunctions will be granted:
    (i) Tenants for life, or years, or in tail;
    (ii) Hindu female heirs;
    (iii) Landlord and tenant:
        (*a*) Agricultural leases. Waste in respect of—
            (i) Buildings.
            (ii) Excavations.
            (iii) Trees.
            (iv) Cultivation.
        (*b*) Non-agricultural leases;
    (iv) Dependent talookdar;
    (v) Mortgagor and Mortgagee.
    (vi) Vendor, purchaser and others.
77. Waste and Trespass by Co-sharers:
    (i) Co-sharers ;
    (ii) Waste and trespass by co-sharers :
        (*a*) Joint user,
        (*b*) Abuse of joint property;
    (iii) Remedies in respect of the abuse of joint property:
        (*a*) Partition,
        (*b*) Declaration of right; account of profit; and damages,
        (*c*) Decree for joint possession,
        (*d*) Injunction;
    (iv) Principles upon which Injunctions are granted in the case of co-sharers :
        (*a*) Cultivation,
        (*b*) Buildings,
        (*c*) Excavations,
        (*d*) Other injurious acts.
78. Persons for whom Injunctions against Waste may be granted.
79. Account in cases of Waste.

71. Trespass.—Trespass may either be to the person (as in the case of assault or false imprisonment), to chattels (as in the case of every direct forcible injury or act, disturbing the possession of goods without the owner's consent), or to land, which is the case here dealt with. Trespass consists in any unjustifiable intrusion upon a person's possession, possession being the present enjoyment of a definite portion of the soil by a person intending to enjoy it as owner. As to what invasion of possession amounts to a trespass, it is said that every unwarrantable entry on another's soil is a trespass by breaking his door, the words

CENTRAL LIBRARY

of the old writ of trespass commanding the defendant to show cause *quare clausum querentis fregit*. In order to maintain an action of trespass the plaintiff must be in the possession of the land; for it is an injury to possession rather than to title. Possession may be either without or with title. A party claiming to have possession without title must, in order to give him what the law understands by possession, and tc enable him to bring an action of trespass, show that he has a *de facto* possession, that is to say, actual physical apprehension of the particular portion of the soil, to the substantial exclusion of all other persons from participating in the enjoyment of it.[1] Where the plaintiff is out of possession the ordinary remedy is not injunction but a decree for the recovery of the land.[2]

Mere possession is good against all the world except the real owner, and is protected both by the Civil[3] and Criminal Law.[4] Possession is also *prima facie* proof of ownership, since men generally own the property which they possess.[5] Where a person is in possession of land, the onus lies upon the *prima facie* trespasser to show that he is entitled to enter.[6] The possession of land suffices to maintain an action of trespass against any person wrongfully entering upon it; and if two persons are in possession of land, each asserting his title to it, then the person who has the title to it is to be considered in actual possession, and the other person is a mere trespasser.[7] The possession of a person, who having title to the land, has entered, continues in him until he has been dispossessed, that is to say, until some other person has acquired a *de facto* possession. His possession differs from that of a person who has no title, in this, that it need not be exclusive. Even in the case of wrongful user, his title will give him the constructive possession. And this constructive continuity of possession will prevent mere non-user from being construed as an abandonment.[8] Joint tenants or tenants-in-common, can only sue one another in trespass for acts done by one inconsistent with the rights of the other, as in the case of the destruction of buildings, injuries to party walls, carrying off of the solil, or expulsion of the plaintiff from his occupation.[9] A person who has been dispossessed may sue to recover possession and for damages and mesne profits and Injunction, and a person in

---

1. *See* Clerk and Lindsell on *Torts* 15th ed. Ch. para 22.

2. *Bhramar Lal* v. *Nanda Lal*, 18 C.W.N., 545 (1913) & cases there cited. And *see Begg Dunlop* v. *Satishchandra*, 46 C. 1001 (1919); So it has been held that if there is occasional disturbance of a right of fishery the case is one for an injunction but if there is exclusion, proceedings should be by way of ejectment ; *Shariff Ahmed* v. *Emperor*, 12 Cr. L.J., 536. In *Sachindralal Mitter* v. *Panchanan Mitter*, 30 C.W.N., 214 (1925) one of three plaintiffs was in possession.

3. Act 47 of 1963, s. 6, under which a possessory suit may be brought in which the question of title is immaterial. *See* Smith's *Leading Cases*, Notes to *Armory* v. *Delamirie*.

4. Cr. Pr. Code, Ch. X; Penal Code, ss. 154, 158.

5. Evidence Act, s. 110. Sarker on *Evidence*, 13th ed.

6. *Asher* v. *Whitlock*, L. R., 1 Q. B., 1.

7. *Jones* v. *Chapman*, 2 Ex., 821. *See* Clerk and Lindsell on *Torts*, 15th ed. paras 22-48 and 22-49.

8. Clerk and Lindsell on *Torts*, 15th ed. para 22-9 to 22-11; *Smith* v. *Lloyd*, 9 Ex., 562.

9. Clerk and Lindsell on *Torts*, 15th ed. para 22-18 ; *see Jacobs* v. *Seward*, L.R., 5 H.L., 464; *Bull* v. *Bull*, (1955)1 All E.R. 253. See Indian decisions cited *post*, and in Ramaswamy Iyer's *Law of Torts*, 8th ed. p. 92.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

possession whose right has been infringed by a trespass may sue for damages and for an Injunction restraining the commission of such trespass. A suit for injunction restraining the defendant from collecting the rent of certain property is not liable to dismissal merely because the possession is with tenants and is not sued for. [10]

72. Injunctions against trespass.—The granting of Injunctions against the commission of trespass seems to have grown out of the jurisdiction in cases of waste, to which the relief was formerly confined. Privity of title being the essential ground of the interference in restraint of waste, it was not until a comparatively recent period that the rule was relaxed to admit of the relief against a naked trespass, unaccompanied with privity of title. The jurisdiction is, however, now well established, although it is still sparingly exercised, being confined to cases where from the peculiar nature of the property affected by the trespass, or from its frequent reputation, the injury sustained cannot be remedied by an action for damages. The foundation of the jurisdiction rests in the probability of irreparable injury, the inadequacy of pecuniary compensation and the prevention of a multiplicity of suits, and where facts are not shown to bring the case within these conditions the relief will be refused. [11]

Prior to the Judicature Act the decisions relating to Injunction in case of trespass were classified under two heads:—(*a*) where the defendant was in possession; (*b*) where the plaintiff was in possession. And the second head was subdivided into the cases—(*i*) of pure trespass where the defendant was an absolute stranger, and (*ii*) where the defendant claimed under colour or right. [12]

Inasmuch as, without possession, actual or constructive, [13] a person cannot bring trespass, the first of the above heads of cases (sometimes discussed along with cases of trespass), in which the plaintiff is out of possession and seeks an Injunction to restrain acts by the person in possession, who claims by title adversely to him, should be excluded. The defendant being in possession and the plaintiff seeking to eject him, the sole question between them is as to the title to the land. If this be in the plaintiff, the defendant is a mere trespasser. Such ordinary ejectment cases are distinguishable from those coming under the second of the above heads, where the injury is a trespass or forcible invasion of plaintiff's possession of his property.

In cases where the relief sought is ejectment, Courts in India may clearly by means of an Injunction secure the property from damage during litigation. At the same time care must be taken lest by interfering with the ordinary rights of ownership the mere institution of a suit should operate as a vexatious interruption

---

10. *Karam Singh* v. *Vir Singh*, 2 L., 252 (1921).

11. High, *Inj.*, § 697 ; Clerk and Lindsell on *Torts*, 15th ed. Chapter 7. [Where land was for many years held and used by the owner as a family burial ground, defendants were enjoined from encroaching thereon and from a threatened removal of the remains of persons interred therein. In such a case there can be no standard by which to estimate the damages sustained since the extent of the injury is dependent upon the feelings and views of the persons aggrieved. *Mooney* v. *Cooledge*, 30 Ark., 640 (Amer.)]. *Stewart* v. *Chew*, 3 Bland., 440 (Amer.). See Act 47 of 1963, s. 38(3).

12. *See* judgment of Kindersley, V. C. in *Lowndes* v. *Bettle*, 33 L.J. Ch., 451.

13. Where the plaintiff is out of possession an interlocutory injunction is not lightly granted; *Begg Dunlop* v. *Satischandra*, 46 C. 1001 (1919) ; 26 C.L.J., 584; *Durgadas* v. *Nalin*, A.I.R. 1934 Cal. 694.

CENTRAL LIBRARY

to the enjoyment of property. The English Courts for special reasons [14] formerly hesitated as to these cases and refused to interfere by Injunction where the plaintiff was out of possession, unless there was fraud or collusion, or unless the acts perpetrated or threatened were so injurious as to tend to the destruction of the estate. [15] Where the plaintiff is in possession there may be, as already observed, a pure trespass or a trespass under colour of title. [16] In both cases the Courts must be guided by a wise discretion according to the facts of the case and the principles enacted by the Specific Relief Act. [17] Where a plaintiff who is out of possession claims possession, the Court will not grant an Injunction against a defendant in possession under a claim of right. But if a threatened injury would be irreparable, a complainant out of possession may have an Injunction. [18]

In ordinary cases of trespass where the trespasser is a mere stranger, a judgment which declares his rights and awards damages is sufficient. But where the defendant is himself entitled to possession as well as the plaintiff and his wrongful act has been committed under claim of right, the Court is justified in protecting the plaintiff's interest by means of a perpetual Injunction. [19]

Formerly the tendency of the Courts was not to grant an Injunction where the trespasser was an utter stranger, unless the act tended to the destruction of the estate or there were special circumstances. On the other hand, where the party in possession sought to restrain one who claimed by adverse title, there the tendency was to grant the Injunction, at least where the acts done either did or might tend to the destruction of the estate.

These distinctions have, however, lost much of their importance in England since the Judicature Act, which enables the Courts to grant an Injunction in all cases, if it shall think fit. [20] So also in India the Courts may grant an Injunction in all the cases of trespass abovementioned according to their discretion, such discretion to be exercised with regard both to the principles enacted by the Specific Relief Act and the circumstances of the particular case. Upon the subject of damage, it must, however, be remembered that an act not amounting in itself to serious damage may, from its continuance, amount to trespass attended by irreparable damage, and there are cases where great damage may be done to property, though the actual damage done by the trespass is nothing. [21]

Where a trespass of a continuing nature has been committed by the defendant, but has been discontinued before suit brought, the Court will not interfere by Injunction to restrain the defendant from continuing such trespass merely because the plaintiff entertains vague apprehensions that the trespass may be recommenced. [22]

---

14. Collett's *Specific Relief Act*, 309, 267, 268.
15. Kerr on *Injunction*, (6th ed.) p. 90.
16. *See* as to this expression *Davenport* v. *Davenport*, 7 Ha., 217.
17. *See* s. 38 of Act 47 of 1963.
18. *Kesho Prasad Singh* v. *Shrinibash Prasad Singh*, 38 C., 791 (1911). See Sarkar's *Specific Relief* Act, 13th ed. p. 528.
19. *Stalkartt* v. *Gopal Panday*, 20 W. R., 168, 169 (1873); s. c., 12 B. L. R., 197. *Sachindra* v. *Binapani*, A.I.R. 1976 Cal. 277.
20. Kerr on *Injunction*, (6th ed.), p. 90. See Halsbury's *Laws of England*, (4th ed.) Vol. 24, para 981.
21. Kerr on *Injunction*, (6th ed.) Ch. V.
22. *Chabildas Lallubhai* v. *The Municipal Commissioner of Bombay*, 8 Bom. H.C.R.,

CENTRAL LIBRARY

Though the jurisdiction by mandatory Injunction to compel the restoration of matters *in status quo* is sparingly exercised, yet a trespass irreparable in its character and of a continuing nature may be restrained by a mandatory Injunction, thus restoring things to their original condition. [23] There must, however, be no delay on the part of the plaintiff in bringing his suit. [24] A mandatory Injunction should not be granted against a trespasser compelling him to come on the land on which he had trespassed to remove an encroachment made thereon by him. [25]

So where the defendant built a wall on the plaintiff's land and thereby committed a trespass, the plaintiff in a suit brought for that purpose obtained damages for the trespass and a mandatory Injunction directing the defendant within two months to remove the wall, and to restore the plaintiff's premises to their former condition. [26]

A Caravan was left on a vacant site which had no sanitary facilities, and the presence of the Caravan rendered it a danger to public health. On a question in which an application for Interlocutory Injunction restraining entry on the land and permitting the Caravan to remain there, an Interlocutory Order was granted and it was further ordered to give up possession to the land-owners. The only object in raising a defence was delay [*Manchester Corporation* v. *Connoly and others*, (1970)1 All E.R. 961 (C.A.)].

While ignorant of one's right on the land, oral permission was granted for construction of sewer. After the sewer was constructed and continuing to discharge effluent through the sewer, it could not be restrained by an injunction after revoking the licence. Only nominal damage would be sufficient [*Armstrong* v. *Sheppard & Short Ltd.*, (1959)2 All E.R. 651 (C.A.)].

The commission of a trespass may subject the offending party to an account which will be taken on varying principles according as the acts complained of have been fraudulent and wilful, or inadvertent and under a *bona fide* belief of title. [27] Compensation may be given for damage. [28] After the establishment of his legal right and the fact of its violation, the plaintiff is entitled as of course to a perpetual Injunction, unless there be something special in the circumstances of the case. Where there has been found to be a continuing trespass by encroachment, relief by way of Injunction is the proper remedy in such a case, for to allow compensation would be to let a trespasser put a value or money worth on another man's property and deprive him of it against his will. [29]

Illustrations of the application of the abovementioned principles may be referred to the Specific Relief Act. [30] Lawful possession of land is sufficient evidence of right as owner, as against a person who has no title whatever and who

---

O.C.J., 85 (1871). As to mere apprehension of trespass, see *Gibbon* v. *Abdur Rahman Khan*, 3 B.L.R., A.C., 411 (1869); *Poran Chand Galeicha* v. *Pareshnath Singh*, 12 W.R., 82 (1869).

23. High, *Inj.*, § 708; Kerr, *Inj.*, (6th ed.), pp. 94-95.
24. *Haji Syed Muhammad* v. *Gulab Rai*, 20 A., 345 (1898); referring to *Benode Coomaree Dossee* v. *Soudamoney Dossee*, 16 C., 252 (1889).
25. *Navroji Maneckji Waria* v. *Dastur Kharsedji Mancherji*, 28 B., 20 (1903).
26. *Jawatri* v. *H. A. Emile*, 13 A., 98 (1890).
27. *See* Kerr, *Inj.*, (6th ed.), p. 129.
28. *Ib.* p. 130.
29. *Jethalall Herachand* v. *Lalbhai Dalpatbhai*, 28 B., 298 (1904), *see* § 30, *ante*.
30. Act 47 of 1963, s. 38.

CENTRAL LIBRARY

is a mere trespasser. The former can obtain a declaratory decree, and an Injunction restraining the wrong-doer. In a suit the defence was that the land was *wakf*, and the defendant *mutwalli* of it. Both Courts found that the plaintiff was in possession as purchaser from some of those who were entitled to sell. But the first Court did not find a fact, which the Appellate Court found, *viz.*, that the property had been constituted *wakf*. Both Courts, however, concurred in the finding that the defendant at all events was not the *mutwalli* and had no title. *Held*, that the plaintiff was entitled to a declaratory decree against this defendant as to his right and an Injunction restraining him from interfering with his possession. For the purposes of the plaintiff's claiming such a decree, it was not necessary that he should negative the *wakf;* as to the validity of the endowment no decision being needed. This could not be decided either way in this suit as parties interested were not before the Court. [31]

Where the defendants under colour of an old farm were collecting from the ryots of the plaintiff's estate two annas rent over and above the full sixteen annas in the rupee, the Court granted an Injunction, being of opinion that an action would lie therefor even though no actual damage had been shown to have been caused to the plaintiff, upon the ground that the owners would otherwise be prejudiced, difficulties and complications might ensue, and that the act complained of must necessarily cause injury. [32]

And where in a Dayabhaga family the father sued for an Injunction to restrain his son from entering ancestral property, a temporary Injunction was granted till the son could obtain a decree for possession of the land with improvements. [33]

In the case of trespass by public Companies or public bodies the principles upon which the English Courts act in restraint of such trespass differ in some respects from those upon which they act in restraining trespass by individuals. Where a private person applies for an Injunction to restrain a public body from entering illegally upon his land he is not required to make out a case of destruction, trespass, or irreparable mischief. The Court will prevent such bodies from deviating in the smallest degree from the terms prescribed by the Statute which gives them authority. If they enter upon a man's land without taking the steps required by the Statute, the Court will at once interfere. The Court has not only jurisdiction to restrain them from affecting a man's land by stirring out of the exact limits prescribed by the Statute which gives them authority, but is almost bound, and will, as a matter of course, interfere, unless the damage is so slight that no injury has arisen, or is likely to arise, or unless the injury is so small as to be incapable of being appreciated by damages, or unless the remedy by damages is adequate and sufficient and the proper remedy, or the trespass is of a merely temporary nature. [34]

---

31. *Ismail Ariff* v. *Mahomed Ghous*, 20 C., 834 (1893); s. c., 20 I. A., 99; *Somnath* v. *Raju*, A.I.R. 1970 S.C. 846. See also Sarkar's *Specific Relief Act*, 13th ed. pp. 29, 30.

32. *Nadirjumma Chowdhury* v. *Ram Chunder Surma*, W.R. (1864), 362.

33. *Dharma Das Kundu* v. *Amulyadhan Kundu* (1906), 3 C., 1119 not following *Waterhouse* v. *Waterhouse* (1905), 22 R., 195.

34. Kerr, *Inj.*, (6th ed.), pp. 99-102.

CENTRAL LIBRARY

In a case [35] decided prior to the passing of the Specific Relief Act, Sargent, J., in discussing the principles upon which the Court will interfere by Injunction to restrain acts of public functionaries in excess of their statutory powers, said that the rule that Courts of Equity will not restrain acts of trespass, unless the injury apprehended from them is of such a nature as that its repetition would cause irreparable loss to the plaintiff, applied only where the trespass complained of was that of a private individual, and not where the act is that of a public functionary. It is apprehended, however, that since the passing of the Specific Relief Act all cases of whatever nature must be decided by reference to the principles contained in that Act.

Where the trespass is of a trifling nature, or where damages are sufficient remedy, or where the granting of an injunction would be oppressive, an injunction may be refused. [36]

73. Who may sue and be sued in respect of trespass.—It is as equally elementary that only the person, who commits the trespass, can be sued, as that without possession, actual or constructive, a man cannot bring an action of trespass the essential character of which is the forcible invasion of another's right of possession. In this as in all other torts the applicant must have a personal interest in the matter, [37] and his conduct and that of his agents must not have been such as to disentitle him to the assistance of the Court. [38] There must have been no delay or acquiescence. [39] The tenant or holder should sue in all cases of trespass, unless there is permanent damage to the property; the general rule being that the reversioner can only sue where there is a permanent damage to the reversion. [40]

A landlord who has only a constructive possession of lands through his tenant cannot obtain relief by way of Injunction.

D sued in the Mamlatdar's Court, as *A's* constituted attorney, for an Injunction restraining defendants from causing any obstruction to his possession of certain lands. The land belonged to *A's* husband, who was alleged to be a lunatic. But there was no adjudication of his lunacy nor was *A* appointed a manager of his estate. *Held* that D had no right to sue. *A* not having been appointed a manager of her husband's estate, had herself no right to sue in respect of a disturbance of her husband's possession. She could not therefore authorize her agent to sue on her behalf. [41]

---

35. *Chabildas Lallubhai* v. *The Municipal Commissioner of Bombay*, 8 Bom. H. C.R., 85, 91 (1871). The learned judge added "for the correct exposition of the law applicable to public Companies and persons in a similar position, I cannot do better than to refer to Mr. Kerr's work on *Injunctions* at p. 295, where he says [*here follows the passage, a reference to which is given in the last note*]." As to the acquisition of land for public purposes and for Companies, see Act 47 of 1963.

36. Halsbury's *Laws of England*, (4th ed.), Vol. 24, para 981.

37. Act 47 of 1963, s. 41(j).

38. *Ib.*, *cl.* (*i*).

39. *Ib.*, *cl.* (*g*).

40. *See* cases cited in Ramaswamy Iyer's *The Law of Torts*, 8th ed. pp. 110, 142-143; this rule has been held not to apply where the landlord is, as it were, a partner with his tenants: *Venkata Chalam Chetty* v. *Andiappan Ambalam*, 2 M., 232 (1879).

41. *Nemara* v. *Devandrappa*, 15 B., 177 (1890); following *Desai* v. *Keshavbhai*, 12 B., 419 (1887).

CENTRAL LIBRARY

If ryots are actually in occupation of their lands and are only interfered with and embarrassed in that occupation, the proprietors are not entitled to sue, but the ryots themselves have a right to sue for an Injunction restraining the trespasser from interference. If they are ousted, the zemindar has a right to bring an action against the trespasser to recover possession. Where there has been an ouster from *zarait* land and the trespasser is cultivating indigo thereon, the remedy is ejectment, and not an Injunction from cultivating the indigo, for such a prayer implies a right to cultivate other crops. [42]

If a stranger trespasses upon joint property, one of the several persons jointly interested in the property is entitled to restrain that stranger from committing the trespass. [43] If some of several co-parceners purchase from a stranger trespasser a building erected by him on land jointly held by all the co-parceners, such purchasers are *quoad* the building, trespassers, and a suit is maintainable by the remaining co-parceners to be put into joint possession of the land covered by the building. [44]

A private person may sue in respect of a matter affecting the public interest, if he can make out a case of special damage or can show that greater damage is caused to him by the act complained of than is caused to the public in general. [45]

The fact that other persons have similar rights to those of the plaintiff does not necessarily make the latter's right a public right in the sense that no action can be brought upon it, unless special damage is proved. A right claimed may vest in the plaintiff severally as well as jointly with others. [46]

74. Waste.—The torts of waste and trespass dealt with in this Chapter are wrongs to possession and property in respect of which Injunctions will issue upon the principles hereinafter stated. It is clear that an owner in possession of an absolute estate of inheritance has indefinite rights of use and dominion with power to waste land and to destroy chattles at his pleasure. Waste, therefore, has been defined as a substantial injury to the inheritance done by one having a *limited* estate during the continuance of that estate. Such injury may be caused either by diminishing the value of the estate or by increasing the burdens upon it or by imparing the evidence of title. The owner of the absolute estate has the right to require that the nature and character of the property shall not be changed by the owner of the limited estate. An act may therefore constitute waste which increases the value of the property, such as an act which increases the value of the estate but which impairs the evidence of title or increases the burdens on the property. It is not, however, every conversion of land which constitutes waste. There must be an injury to the inheritance either "in the sense of value" or "in the sense of destroying identity:" by what is called destroying evidence of the

---

42. *Nundun Lall* v. *Lloyd*, 22 W. R., 74 (1874). But as to the right of one of several joint tenants to eject a trespasser, referred to in this decision, see cases cited in Ramaswamy Iyer's *The Law of Torts*, 8th ed. p. 110. A trustee can alone sue in ejectment. *Lackersteen* v. *Taruknath Poramanick*, Cor., 91 (1864).

43. *Muhammad Ali Jan* v. *Faiz Baksh*, 18 A., 362 (1896). See *Daya Nand* v. *Harpal*, (1982) All L.J. 178, *M. Kallappa Satty* v. *M. V. L. Rao*, A.I.R. 1972 S.C, 2299.

44. *Muhammad Ali Jan* v. *Faiz Buksh*, 18A., 361 (1896).

45. Kerr, *Inj.*, (6th ed.), p. 98.

46. *Venkatachala* v. *Kuppusami*, 11 M., 42 (1887) [right to graze cattle].

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

owner's title, a peculiar head of the law which has not been extended in modern times. In times past, however, where evidence of title depended entirely upon the memory of witnesses an alteration of evidence of title was a very serious matter. But the existence of ordnance, surveys and maps have greatly reduced the importance of such alterations, and the Courts will consider only that to be waste which is so in the real and not in a technical sense of the term.

The distinction between waste and trespass consists in the former being the abuse or the destructive use of property by one who, while not possessed of the absolute title thereto, has yet a right to its legitimate use; trespass being in injury to property by one who has no right whatever to its use. The essential character of waste is, that the party committing it is in rightful possession and that there is a privity of title between the parties.[47] The definition above given is that of the so-called "legal" wase. "Equitable" waste, according to English Law, is the unconscientious use of a legal power, as by a tenant for life or years holding an estate created "without impeachment of waste."[48] The effect at law of such a clause in an instrument prior to the Judicature Act, 1873, was not only to allow a tenant for life or years to commit waste, but it was a special power permitting him to appropriate the produce of the waste to his own use. A Court of Equity, however, considered the excessive use of the legal power incident to an estate unimpeachable of waste to be inequitable and unjust and therefore controlled it. That Court, therefore, in the exercise of its jurisdiction restrained all destructive, malicious or extravagant waste,[49] and the Courts in India would no doubt, if called upon to do so, proceed upon the same principles should the occasion arise. Legal waste may be caused by felling timber-trees,[50] by (in the case of tenants of warrens, fish-ponds and the like) taking so many of the animals that the perpetuity of succession is destroyed,[51] by digging for minerals,[52] by alteration of character or bad cultivation of land.[53] pulling down or altering buildings or suffering them to decay,[54] and by other like acts of an injurious or destructive character. Waste which consists in the commission of positive acts is called "voluntary" waste whereas "premissive" waste is the suffering the tenement to lose its value or go to ruin for want of necessary repair.

---

47. Kerr, *Inj.*, (6th ed.), p. 47 ; High, *Inj.*, § 650 ; Clerk and Lindsell on *Torts*, 15th ed. paras 22-70, 22-71 ; as to waste by destroying evidence of title, see *Doherty* v. *Allman*, L. R., 3 App. Cas., 725, 726, 735 (1878) ; *Jones* v. *Chappell*, L.R., 20 Eq., 542 (1875).

48. "Equitable waste is defined to consist of such acts as are not considered waste at law, being consistent with the legal rights of the party committing them, but which are deemed waste in Equity on account of their manifest injury to the inheritance :" High, *Inj.*, § 680; citing 2 Story. *Eq.*, § 915., Snell's *Principles of Equity*, 28th ed. pp 15, 654 655.

49. Kerr, *Inj.*, (6th ed), pp. 73-74.

50. *See* Act 47 of 1963 s. 38 ; Kerr, *Inj.*, (6th ed.), pp. 48-50. *See* also High *Inj.*, §§ 671-679. Perhaps the most frequent class of cases on this head are suits to restrain waste by cutting and removing timber from estates of freehold.

51. Kerr, *Inj.*, (6th ed.) pp. 47-48.

52. *Ib.*, pp. 51-53.

53. *Ib.*, pp. 54-55.

54. *Ib.*, p. 55 ; as to alteration : see *Ramchandra Vasudevshet* v. *Babaji Kusaji*, 15 B., 73 (1890).

CENTRAL LIBRARY

75. Injunctions against waste.—The Court will in a proper case grant an Injunction restraining the commission of waste.[55] The principles upon which the Court interferes in cases of waste are the same as those upon which it proceeds in other cases.[56] In the first place, it is well established that, in actions brought for the express purpose of restraining waste, privity of title must exist between the parties to the action.[57] Next as a general rule, the Court will not issue an Injunction to restrain waste except upon unquestioned evidence of complainant's title, and where the defendant is in possession under adverse title, the relief will be refused.[58] Nor will the Court interfere by Injunction, when complainant's title is not clear, since the relief is granted only when the title is free from dispute.[59] A particular title must be shown by complainant;[60] and it was held that when there was grave doubt whether an action at law could be maintained for the alleged waste it was proper to refuse a temporary Injunction.[61] Thirdly, waste or threat of waste must be established, and the Court will not interfere where the waste is of a trivial nature, unless an intention to commit further waste can be shown, when the Court will interfere, though the first acts of waste may have been of a trival nature. Moreover, to warrant interference it is not essential that actual and serious waste should have been already committed, for the Court has jurisdiction, if a fair case of prospective injury can be made out, to interfere before waste has been actually committed. The plaintiff must show either some actual violation of his right or a sufficient ground to apprehend it. A mere statement, however, that the plaintiff apprehends that the defendant intends to commit waste (without stating any ground for it) is insufficient.[62] When the injury complained of is susceptible of perfect pecuniary compensation, and one for which satisfaction in damages can be had,[63] or where adequate relief may be had otherwise than by Injunction,[64] in both of such cases the Injunction will be withheld. Lastly, the principles with regard to delay and acquiescence are generally applicable in cases of waste. It is, however, to be noted that delay is not so prejudicial to the plaintiff in cases of waste as in other applications for Injunctions, and in some cases is not material. So a person, who been permitted to cut down half of the trees upon the land of another, can acquire no title from the negligence of the owner to cut down the remaining half. The

---

55. *See* Act 47 of 1963, s. 38; Halsbury's *Laws of England*, (4th ed.), Vol. 24, para 978 (Injunction ought to be granted to prevent any threatened or apprehended waste).

56. *See* High, *Inj.*, Ch. XI : Kerr, *Inj.*, (6th ed.) Ch. IV.

57. v. *post*.

58. *Pillsworth* v. *Hopton*, 6 Ves., 51; *Davies* v. *Leo*, *ib.*, 784; *Talbot v. Hope Scott*, 4 K. & J., 96.

59. *Lowe* v. *Lucey*, 1 Ir. Eq., 93; cited in High *Inj.*, § 651.

60. *Whitelegge* v. *Whitelegge*, 1 Bro. C. C., 58.

61. *Lurting* v. *Conn*, 1 Ir. Ch., 273, cited in High, *Inj.*, § 651. So where the question of the right to do the thing which it was sought to restrain as waste was doubtful and rested upon the construction of a Statute which was doubtful, the Court refused an Injunction in the first instance: *Field* v. *Jackson*, Dick., 599; cited *ib*.

62. High, *Inj.*, § 655 ; Kerr, *Inj.*, (6th ed.), pp. 45-46 ; and cases there cited ; as to the refusal of Injunction in cases of ameliorative or trivial waste, see *Doherty* v. *Allman* L.R., 3 App. Cas, 722, 724, 733.

63. *Cockey* v. *Carroll*, 4 Ind. Ch., 344 (Amer.) ; *see* Act I of 1877, s. 54.

64. *Montgomery* v. *Walker*, 36 Ga., 515 (Amer.) ; *see* Act I of 1877, s. 56, cl. (i),

CENTRAL LIBRARY

case is, however, different, if the defendant has been encouraged by the acquiescence of the plaintiff to expend moneys upon the property, upon the faith and understanding that no obstacle will be afterwards thrown in the way of his enjoyment. [65]

76. Against whom such Injunctions will be granted.—Injunctions against the commission of waste will be granted against the following, amongst other persons:—

(i) Tenants for life or years, or in tail.—The jurisdiction of Equity to stay the commission of waste at the suit of the owner of the inheritance against the tenant for life or years is well established, and is frequently exercised in England, where such estates are of common occurrence. A tenant-in-tail in possession, with successive estates tail in remainder is dispunishable of both legal and equitable waste, because he may at any time bar the entail and acquire the absolute fee-simple; so also is a tenant-in-tail with the reversion in the Crown and a tenant-in-tail under an Act of Parliament, which precludes the barring of the entail. Tenants-in-tail after possibility of issue extinct, who have been in possession, and tenants-in-fee-simple subject to an executory devise over, and heirs taking by resulting trust, until the happening of the contingency, are within the principle of equitable waste only. [66] It would serve no practical purpose, however, to further deal with these and other estates, which are peculiar to English Law and almost unknown in India.

(ii) Hindu female heirs.—The nature of the estate taken by Hindu female heirs, whether widows, daughters or mothers is anomalous, if it be considered with reference to the principles of English Law. Now, after the passing of the Hindu Succession Act, 1956 property of a female Hindu shall be her absolute property. [67]

(iii) Landlord and Tenant.—Inasmuch as the Transfer of Property Act does not apply to leases for agricultural purposes, [67a] but to leases for other purposes only, and as in this country and in Bengal there has always been a very considerable distinction between land held for agricultural purposes, and land held for other or non-agricultural purposes, [68] that distinction has been preserved in this Chapter and the decisions relating to the one class of leases have been separately considered from those relating to the other class.

A landlord may sue for an Injunction, non-mandatory or mandatory, restraining the commission of waste by his tenant. [69] As between landlord and

---

65. Kerr, *Inj.*, (6th ed.), p. 46 as to acquiescence, see *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882) cited *post*: the utmost degree of promptitude is exacted in cases of waste in mines owing to the peculiar nature of the property; *Parrot* v. *Palmer*, 3 M. & K., 635; *Norway* v. *Rowe*, 19 Ves., 159; *Hillton* v. *Lord Granville*, Cr. & Ph., 283. Snell's *Principles of Equity*, 28th ed. p. 655.

66. Kerr, *Inj.*, (6th ed.), pp. 64-65.

67. Act 30 of 1956, s. 14.

67a. Act IV of 1882, s. 117; a lease of a coffee-garden is not an agricultural lease within the meaning of this section; *Kunhayen Haji* v. *Mayan*, 17 M., 98 (1893).

68. *Per* Field, J., in *Prosunno Coomar Chatterjee* v. *Jagun Nath Bysack*, 10 C.L.R., 26 (1881).

69. Where a Receiver has been appointed the Receiver may have an Injunction to restrain tenants or under-tenants for committing waste. Kerr, *Inj.*, (6th ed.), pp. 67-68.

CENTRAL LIBRARY

tenant no length of abuse will give the tenant a right to commit waste. The allowance of the abuse is only by the permission of the landlord, and can never be turned against him by the tenant, whose rights are only to be ascertained by the lease.[70] It has been said that there is a distinction in the general principles upon which the Court proceeds in restraining acts of waste done in violation of an express agreement from those on which it proceeds in restraining acts of pure waste at common law; that in restraining pure waste, irrespectively of agreement, the Court proceeds upon the ground of irreparable damage, and will not interfere, if the damage be small: whilst in restraining acts of waste in breach of covenants the Court proceeds upon the principle that where a positive stipulation has been entered into between two parties, either party has a right to insist upon its literal performance by the other, irrespectively of the question of damage.[71] It is, however, apprehended that both class of cases will be alike governed by the principles of the Specific Relief Act, and that both in the case of the breach of express covenants,[72] and of the implied duty[73] of a tenant, the Court will, in determining the question of the right to an Injunction consider the question of damage. The Courts will be disposed to place a liberal interpretation on the rights of the tenant[74] and will not interfere at all where the damage is small, and will not interfere by Injunction except where the damage is serious, and the principle enacted by the Specific Relief Act warrants such interference. It is, therefore, doubtful whether in this country the Courts will except from this general rule express covenants and will insist upon their literal performance irrespective of damage.

Rules of English Law and decisions of English Courts may be referred to with advantage in the case of waste by non-agricultural tenants, but in other cases such rules and decisions will not prove to be of special assistance or general applicability in this country where both the nature of the climate and soil, the course of husbandry, and the nature of the tenures under which land is held, differ in most material respects from the state of things which exist in England.[75] There have been, however, numerous decisions by the Courts of this country touching the question of the obligations of tenants in this regard, and it is to these that recourse must be had for the ascertainment of the law governing the subject.

(a) **Agricultural lease. Waste in respect of.**—A landlord, though he has parted with the possession, has still an interest in the land, which he has a right to protect.[76] It is no objection to the granting of an Injunction that the landlord may not be entitled to *khas* possession.[77] Though a landlord may have no

---

70. Kerr, *Inj.*, (6th ed.), p. 68 [citing *Lord Courtown* v. *Ward* (Sch. & L., 8)].

71. Kerr, *Inj.*, (6th ed.), pp. 67-68.

72. In *Monindro Chunder Sircar* v. *Moneeruddeen Biswas*, 11 B.L.R., 40 (1873), there was an express covenant, but no mention is made as to damage suffered.

73. Cf. *Noyna Misser* v. *Rupikun*, 9 C., 609, 611 (1882).

74. See *Lal Sahoo* v. *Deo Narain Singh*, 3 C., 781 (1878).

75. See *Tarinee Churn Bose* v. *Ramjee Pal*, 23 W.R., 299 (1875).

76. *Tarini Charan Bose* v. *Debnarayan Mistri*, 8 B.L.R., App. 69, 71 (1872); *Noyna Misser* v. *Rupikun*, 9 C., 611 (1882).

77. *Tarini Charan Bose* v. *Debnarayan Mistri*, 8 B.L.R., App. 71 (1871); but see *Lootf Ali* v. *Shib Dyal Singh*, 8 W.R., 512 (1867); which decision has not, however, been followed in later cases. *Ramanadhan* v. *Zemindar of Ramnad*, 16 M., 407, 409 (1893).

CENTRAL LIBRARY

interest left in the land but the right to receive the rent and to sell the tenure in default of payment of rent, he is yet fully at liberty to protect the land from damage or injury, and to prevent any use of it by which its permanent usefulness is impaired or endangered.[78] A tenant by virtue of his demise does not obtain any other dominion over the land than is consistent with the contract under which it is held.[79] Where there is no express covenant as to the user of the land, there is nevertheless an implied agreement that the land shall be retained substantially in the same condition in which it was at the time of the demise; that the land shall be used for the purposes for which it was granted; and that there shall not be a complete change in the mode of enjoyment.[80] The mere relation of landlord and tenant creates an implied obligation on the part of the tenant to use agricultural land in a husband-like manner according to the custom of the country where the premises are situated, unless the lease or agreement contains some express covenants inconsistent with such custom and sufficient to exclude it.[81] So it *A* lets certain arable lands to *B* for purposes of husbandry, but without any express contract as to the mode of cultivation; and if, contrary to the mode of cultivation customary in the district, *B* threatens to sow the lands with seed injurious thereto and requiring many years to eradicate, *A* may sue for an Injunction to restrain *B* from sowing the lands in contravention of his implied contract to use them in a husband-like manner.[82]

A tenant has not the right to alter the character of the land which he holds in such a way as to permanently injure the interests of the landlord in the land.[83] It has been held by the Allahabad High Court that an act done by a tenant "detrimental to the land" means an act which injures the land itself. And "an act inconsistent with the purpose for which the land was let" means some such act as the making of a tank, or the altering the character of the land, as for instance turning it from agricultural land to building-land.[84] Therefore, a mortgage of his holding by an occupancy-tenant, under which the mortgagee obtains possession, is not "an act detrimental to the land" or "inconsistent with the purpose for which the land was let."[85] No tenant taking land is entitled, without some specific agreement on the subject, to change the nature of that land from what it was when he got it, or to make any permanent alteration in the state of the landlord's property. If a person wishes to lease lands for a particular purpose and to alter the character of the land, such alteration should be the

---

78. *Nicholl* v. *Tarinee Churn Bose*, 23 W.R., 299, 300 (1875).

79. *Lal Sahoo* v. *Deo Narain Singh*, 3 C., 781 (1878).

80. *Ib.*; *Noyna Misser* v. *Rupikun*, 9 C., 609, 611 (1882).

81. Kerr, *Inj.*, (6th ed.), p. 55. As to raiyats with occupancy-rights, see *Venkayya* v. *Ramasami*, 22 M., 43 (1898).

82. See Act 47 of 1963, s. 38; but the merely allowing the land to be waste would not of itself determine the tenancy : though such procedure on the part of the tenant would under some circumstances be evidence of an intention to abandon the holding: *Adiveru Dinabandhu Patrudu* v. *Lockanadhasami*, 6 M., 322 (1882); *Narasimma* v. *Lakshmana*, 13 M., 124, 127 (1889).

83. *Noyna Misser* v. *Rupikun*, 9 C., 611 (1882); *Lakshmana* v. *Ramachandra*, 10 M., 351, 353 (1887).

84. *Madho Lal* v. *Sheo Prasad Misr*, 12 A., 419 (1889).

85. *Ib.*

CENTRAL LIBRARY

subject of a special agreement between the parties in the same way as when parties take lands for building purposes.[86] A tenant may be guilty of a breach of duty in the use of his land in various ways, as by building upon it improperly, by excavating it, by improper dealing in the matter of trees, by changing the character of the cultivation or by other acts of a similar nature.[87] A tenant who alters the character of the land in such a way as to permanently injure the interests of the landlord, commits a wrong in respect of which a suit for damages will undoubtedly lie,[88] and which will be restrained by Injunction in proper cases. So tenants have been restrained by Injunction from building,[89] excavating the soil, as for tanks,[90] brick-making,[91] or the like; planting or cutting down trees,[92] changing the course of husbandry,[93] as by turning cultivated land into a mango-grove,[94] or paddy-land into garden-land,[95] and tenants will be restrained from in any other manner injuriously changing the character of the land or the user for which it was granted. For any permanent alteration of the character of land, such as the conversion of pasture into arable land, or arable land into wood, or meadow into an orchard, is waste, even although the value of the land be increased, because it not only changes the course of husbandry, but affects the proof of title. But a mere temporary alteration in the ordinary and reasonable course of husbandry is not waste.[96] Local custom, however, may authorize acts which would otherwise be unlawful.[97]

Though a landlord may be entitled to damages, delay or acquiescence or other circumstances in the case may disentitle him to relief by Injunction. So, where the temant of an agricultural holding planted his *jote* with mango-trees to the knowledge, but without the consent, of his landlord, thus changing the character of the land, and more than three years afterwards the landlord sued for a mandatory Injunction to have the mango-trees removed it was *held* that, having stood by for more than three years and allowed the tenant to spend his labour and capital upon the land without taking any action in the matter, the landlord was not entitled to the Injunction sought, and as there was no claim

---

86. *Anundcoomar Mookerjee* v. *Bissonath Banerjee*, 17 W.R., 416 (1872).

87. *Noyna Misser* v. *Rupikun*, 9 C., 610 (1882).

88. *Ib.*, 611; *Kadumbinee Dabee* v. *Nobeen Chunder Adukh*, 2 W.R., 157 (1865).

89. *Lal Sahoo* v. *Deo Narain Singh*, 3 C., 781 (1878); *Bholai* v. *Rajah of Bansi*, 4 A., 174 (1881); *Madho Lal* v. *Sheo Prasad Misr*, 12 A., 419 (1889); *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882); *Prosunno Coomar Chatterjee* v. *Jagun Nath Bysack*, 10 C.L.R., 25 (1881); *Jugal Chunder Roy Chowdhry* v. *Eshan Chunder Banerjee*, 24 W.R., 220 (1875).

90. *Anath Nath Dey* v. *A. B. Mackintosh*, 8 B.L.R., 60, 69 (1871); *Madho Lal* v. *Sheo Prasad Misr*, 12 A., 419 (1889); *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882).

91. *Anund Coomar Mookerjee* v. *Bissonath Banerjee*, 17 W.R., 416, (1872); *Nicholl* v. *Tarinee Churn Bose*, 23 W.R., 298 (1875).

92. *Bholai* v. *Rajah of Bansi*, 4 A., 174 (1881); *Lakshmana* v. *Ramchandra*, 10 M., 351 (1887); *Nathan* v. *Kamala Kuar*, 13 A., 572 (1891).

93. *Lakshmana* v. *Ramchandra*, 10 M., 351 (1887); *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882); *Kunhamed* v. *Narayanan Mussad*, 12 M., 320 (1888).

94. *Lakshmana* v. *Ramchandra*, 10 M., 351 (1887).

95. *Kunhamed* v. *Narayanan Mussad*, 12 M., 320 (1888).

96. Kerr, *Inj.*, (6th ed.), p. 54.

97. *Lakshmana* v. *Ramchandra*, 10 M., 351 (1887); *Tarini Charn Bose* v. *Deb Narayan Mistri*, 8 B.L.R., Ap., 69 (1871).

CENTRAL LIBRARY

for damages, the suit was dismissed with costs.[98] Though, if waste has already been committed and there has been acquiescence or delay on the part of the landlord, the Court will refuse an Injunction to restore the land to its original state;[99] yet though the Court may so refuse to restore the land to its original condition, and so alter the new order of things, if it appear that the manner of use to which it is put under that order causes damage other than that which may be said to be involved in the mere change, the Court will interfere by Injunction to protect the landlord's interests.[1] Some decisions relating to particular acts of waste in respect of (*a*) buildings, (*b*) excavations, (*c*) trees, and (*d*) cultivation, are here cited in illustration of the application of the foregoing principles.

(i) **Buildings.**—Improperly building on land, as by building on agricultural land, or land let for the purpose of arboriculture[2] is an act detrimental to the land[3] and a wrong entitling the landlord to relief by damages or an Injunction.[4] In the case of land let for agricultural purposes, the act of turning it into building land would be an act inconsistent with the purposes for which it was let.[5] A *ryot* relies upon an occupancy-right. If, then, the land was let on the understanding that it was to be used for cultivation, the fact that the *ryot* has acquired a right of occupancy does not alter any of the terms of the letting except the conditions (if any) fixing a term for the tenancy. The statutory right of occupancy will not be extended so as to make it include complete dominion over the land subject only to the payment of a rent liable to be enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purpose for which it was granted, and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment. And, if such a tenant builds upon the land, he will be restrained by Injunction from doing so and compelled to remove the building, if erected.[6] This case is an authority only for the proposition that where land is still in a state of agriculture a tenant has no right without his landlord's consent to alter the agricultural nature and use of the land. But when that use has been already changed and a large portion of the land is no longer agricultural but used for tanks and gardens, the rule laid down by that case will not apply. An occupancy-tenant may, in such case, build a *pucca* house upon his land, and the building of such a house upon land which has ceased to be agricultural can only have the effect of improving the value of the property and giving the landlord a better security for his rent.[7] An

---

98. *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882).

99. *Ib.*

1. *Nicholl* v. *Tarinee Churn Bose*, 23 W.R., 299, 300 (1875).

2. *Kunhamed* v. *Narayanan Mussad*, 12 M., 320, 323, *note* (1888).

3. *Bholai* v. *Rajah of Bansi*, 4 A., 176 (1881); *Madho Lal* v. *Sheo Prasad*, 12 A., 419 (1889); *Jugat Chunder Roy* v. *Eshan Chunder Banerjee*, 24 W.R., 220 (1875).

4. *Noyna Misser* v. *Rupikun*, 9 C., 609, 611 (1882).

5. *Madho Lal* v. *Sheo Prasad Misr*, 12 A., 422 (1889).

6. *Lal Sahoo* v. *Deo Narain Singh*, 3 C., 781 (1878).

7. *Prosunno Coomar Chatterjee* v. *Jagun Nath Bysack*, 10 C.L.R., 25, 30 (1881); but see *ib.*, 26, 27, *per* Field, J. In *Nyamutoollah Ostagur* v. *Gobind Churn Dutt*, 6 W.R., Act X, 40 (1866), an occupancy-tenant's right in this respect was laid down in terms which have been followed in recent cases: see note *Ramanadhan* v. *Zamindar of Ramnad*, 16 M., 407, 409 (1893); *Hari Kisore* v. *Barada Kisore*, 31 C., 1014, 1018, 1019 (1904).

CENTRAL LIBRARY

occupancy-*ryot* has a right to erect as a dwelling-house a building consisting of masonry walls with a corrugated iron roof on the site of his ancestor's dwelling-house within the homestead land of the holding; there is nothing in the Bengal Tenancy Act to prevent him from doing so: nor is there anything in section 76 of that Act to indicate a suitable dwelling-house of an occupancy-*ryot* as described in that section must be of a temporary description only. [8] A transferee of a tenant's interest even though he be a co-sharer, is under the same obligations in this respect as was his transferor. Though *ryots* having rights of occupancy-land for agricultural purposes may have the right to transfer them to any person to hold for the same purpose, that will not enable a person who may be desirous of erecting a large house in the midst of an agricultural *mehal* to buy up the tenures and rights of several cultivators and convert the land which they formerly occupied into a dwelling-house and appurtenances. [9] *A fortiori* where a lessee has expressly covenanted that he should not do a particular act on the land, he cannot avoid his obligation by parting with his interest: his sub-lessees will take the land subject to his covenant, and if they act in breach or it, an action for damages and an Injunction will lie against them. [10]

Acquiescence and delay will, however, bar the right to an Injunction. [11]

In a suit for an Injunction compelling the defendant to remove a certain building erected by him on land which he held from the plaintiff as an agricultural holding and to restrain him from altering the character of the land, it appeared that the defendant had occupancy-rights in the land in question, which formed part of the plaintiff s *zemindari,* and that the land had been used for agricultural purposes merely up to a recent date, when the defendant erected a building which was in no way connected with agricultural purposes but was intended to be used either as a dwelling-house or as a pleasure-house. It was admitted that the defendant had an occupancy-right. It was held upon a consideration of most of the preceding authorities that "It is a settled rule of law that no tenant, whether he has an occupancy-right or not, is at liberty to erect houses upon agricultural holdings for other than agricultural purposes and thereby to alter the character of the holding. Every such tenant is under an implied obligation to do no act which is not consistent with the purpose for which the land was originally let for cultivation. That this was the law administered in India is also clear from the cases cited by the District Munsiff, and from the decisions of this Court. [12] It is argued by appellant's pleader, that the cases referred to relate to tenancies from year to year or for a term of years and not to tenants who have occupancy-rights. The principle on which those cases were decided is that in an agricultural holding the tenant is under an obligation not to alter the character of the

---

8. *Hari Kisore* v. *Barada Kisore,* 31 C., 1024 (1904), s.c. 8 C.W.N., 754.
9. *Jugat Chunder Roy Chowdhry* v. *Eshan Chunder Banerjee,* 24 W.R., 220 (1875).
10. *Monindro Chunder Sircar* v. *Moneeruddeen Biswas,* 11 B.L.R., App., 40. (1873).
11. *Noyna Misser* v. *Rupikun,* 9 C., 609 (1882).
12. *Jugat Chunder Roy Chowdhury* v. *Eshan Chunder Banerjee,* 24 W.R., 220 (1875); *Tarini Charan Bose* v. *Debnarayan Mistry,* 8 B.L.R., p. 69 (1871); *Lal Sahoo* v. *Deo Narain Singh,* 3 C., 781 (1878) [see *Noyna Misser* v. *Rupikun,* 9 C., 609 (1882)]; *Bholai* v. *Rajah of Bansi,* 4 A., 174 (1881); *Madho Lal* v. *Sheo Prasad Misr,* 12 A., 419 (1889); *Lakshmana* v. *Ramchandra,* 10 M., 351 (1887); *Kunhamed* v. *Narayanan Mussad,* 12 M., 320 (1888).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

holding and that the landlord is entitled to insist upon the tenant abstaining from doing anything inconsistent with the purpose for which the land was originally let. The appellants' pleader draws our attention to *Jones* v. *Chappell* [13] and to *Doherty* v. *Allman*. [14] These are cases relating to leases of houses and not to agricultural holdings, and they are therefore not in point. On the other hand, *Meux* v. *Cobley* [15] is a case in point as illustrating the principle which regulates the rights of tenants having agricultural holdings. It is there distinctly laid down that the question on which the decision should rest in such a case as this is whether the act done by the tenant is consistent with the purpose for which the land was demised." [16]

(ii) Excavations.—In the absence of proof of the nature of his tenure, or a local custom, giving tenants the right to dig tanks without the consent of the landlord, it is for the tenant to show that the digging a tank is a fair and reasonable use of the land which he holds—a use which will not be to the material detriment of the landlord. [17] In the absence of such proof a landlord will in an otherwise proper case, be entitled to a mandatory Injunction ordering that the tank shall be filled up and the land restored to its original condition. [18] Where there has been an express covenant not to excavate a tank an action for damages and an Injunction will lie against the lessee, and, if he has parted with his interest, against his sub-lessees. [19] In the case of land let for agricultural purposes the making of a tank would be an act inconsistent with the purpose for which the land was let [20] But the digging of a well is not an act detrimental to the land or inconsistent with the purposes for which it was let. [21] The granting of an Injunction in this case also will be subject to the question whether there has been delay or acquiescence proved. [22] It is no objection to an order being made that the plaintiff is not entitled to *khas* possession. The plaintiff may not be so entitled, but he retains a certain interest in the land which entitles him to ask that the injury done to his property may be removed, which may be done more easily at the date of suit than thereafter. [23] The excavation of the land for the purpose of brick-mkaing is waste. If a person wishes to lease land for the purpose of making bricks, that should be the subject of a special agreement between the parties in the same way as when parties take lands for building purposes. [24] But where the brick-making does not involve any waste or injury,

---

13. L.R., 20 Eq., 539.
14. L.R., 5 App. Gas., 709.
15. L.R., (1892), 2 Ch. D., 253.
16. *Ramanadhan* v. *Zamindar of Ramnad*, 16 M., 407, 408, 409 (1893); followed in *Ishupati* v. *Rajah Rangayya Appa Rau*, 17 M., 54, 58 (1893).
17. *Anath Nath Dey* v. *A. B. Mackintosh*, 8 B.L.R., App., 69 (1871).
18. *Ib.*; *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882); *Madho Lal* v. *Sheo Prasad Misr*, 12 A., 422 (1889).
19. *Monindra Chunder Sircar* v. *Moneeruddin Biswas*, 11 B.L.R., App., 40 (1873).
20. *Madho Lal* v. *Sheo Prasad Misr*, 12 A., 422 (1889).
21. *Bholai* v. *Rajah of Bansi*, 4 A., 176 (1881).
22. *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882).
23. *Anath Nath Dey* v. *A. B. Mackintosh*, 8 B.L.R., App., 71 (1871).
24. *Anundcoomar Mookerjee* v. *Bissonath Banerjee*, 17 W.R., 416 (1872); *Kadumbinee Dabee* v. *Nobeen Chunder Adukh*, 2 W.R., 157 (1868).

CENTRAL LIBRARY

no Injunction will be granted: as where brick-making has been carried on for more than 25 years on the land with the acquiescence of the landlord, and there being no trace of any other mode of enjoyment, it cannot be said that the land has been diverted from its original destination.[25] In a suit brought by a landlord against a tenant where the primary relief sought was a mandatory Injunction, directing the defendant to fill up a tank excavated by him in contravention of the terms of the tenancy and to pay damages, and where the secondary relief sought was ejectment, it was held that the suit was barred, inasmuch as it was brought more than two years after the excavation of the tank.[26]

(iii) Trees.—To change (in the absence of local custom) the character of agricultural land by planting trees, as by the conversion of land under cultivation into a mango-grove[27] or planting land let for wet cultivation with jack, cocoanut and arecanut trees[28] is an act of waste in respect of which an Injunction will be granted. It is an act detrimental to the land and inconsistent with the purposes for which it was let.[29] A tenant is entitled to prevent the growth of any trees which were not growing at the time of the commencement of his tenancy, and the growth of which would interfere with the purpose for which the land was let to him, provided that there is no contract or custom to the contrary.[30] The property in trees growing on land is, by the general law, vested in the proprietor of the land, subject, of course, to any custom to the contrary. The right to appropriate them when cut down, however, is a different question. In a suit by landlords against their tenants, who had a right of occupancy, for appropriating some mango-trees growing on their land which they had cut down, it was *held* that the *onus* was rightly thrown on the tenants of proving a custom they alleged, giving them the right to sell the trees, and on failure to prove such custom, they were liable to damages for so appropriating them.[31] Where there is a custom that *zemindars* have a right to one-fourth of the value of trees cut down by *ryots* without their consent or permission, that implies that the *ryots* have a right to to cut down the trees and an Injunction restraining them cannot be granted.[32] The trees upon an occupancy-holding, whether planted by the tenant himself or not, belong and attach to such holding and like it are not susceptible of transfer by the tenant.[33] When a proprietor sells his rights and becomes entitled to the rights of an ex-proprietary tenant, he holds all rights in the land, *qua* such tenant, which he formerly held in his character as proprietor, of course, paying rent in his capacity as tenant. Where there are trees upon the *sir* land held by him at the time when he lost his proprietary rights, neither the purchaser of those rights nor he himself can cut down or sell them *in invitum* to each other. Short of

---

25. *Nichol* v. *Tarinee Churn Bose*, 23 W.R., 298 (1875); distinguishing *Anundcoomar Mookerjee* v. *Bissonath Banerjee*, 17 W.R., 416 (1872).
26. *Sharoop Dass Mondul* v. *Joggessur Roy Chowdhury*, 26 C., 564 (1899).
27. *Lakshmana* v. *Ramchandra*, 10 M., 351 (1887)).
28. *Kunhamed* v. *Narayanan Mussad*, 12 M., 320 (1888).
29. *Bholai* v. *Rajah of Bansi*, 4 A., 176 (1881).
30. *Nathan* v. *Kamala Kuar*, 13 A., 572 (1891).
31. *Nafur Chandra Pal Chowdhuri* v. *Ram Lal Pal*, 22 C., 742 (1894); see cases therein cited, and *Mon Mohinee Goopta* v. *Raghoonath Misser*, 23 C., 209, 210 (1895).
32. *Nuffer Chunder Ghose* v. *Nundo Lal Gossami*, 22 C., 751 (1894), *note*.
33. *Imdad Khatun* v. *Bhagirath*, 10 A., 159 (1888).

CENTRAL LIBRARY

cutting the trees down, he has the same right to enjoy the trees as he originally had.[34] Where a defendant who held from the plaintiff irrigable land which was cultivated with paddy, etc., and who had an occupancy-right and a fixed money-rent, planted cocoanut trees on the land, it was held that the acts of the defendant did not constitute waste or a breach of the terms of the tenancy.[35] The same rules will apply in this as in the former cases with regard to acquiescence and delay.[36]

(iv) **Cultivation.**—A tenant who changes the character of his cultivation in such a way as to permanently injure the interest of the landlord in the land commits a wrong for which a suit for damages or an Injunction or both will lie;[37] as by planting land let for paddy cultivation with jack, cocoanut and arecanut-trees, such an alteration being unsuited to the nature of the holding and inconsistent with the purpose for which the land was demised;[38] or planting a mango tope on dry land usually cultivated with a dry crop, thereby rendering it unfit for cultivation.[39] And it was held in the last cited case that the defendants, as tenants from year to year, were under the obligation to restore the land in the condition in which it was when it was leased to them, and that they were not at liberty to change the usual course of husbandry except with the consent of their landlord. The manufacture of indigo cakes from indigo plants is not an agricultural purpose. Where land has been let out for agricultural purposes generally, the erection of an indigo factory on any part of such land renders it unfit for the purposes of the tenancy, and the landlord is entitled to a permanent Injunction restraining the tenant from erecting the factory.[40] The same principles with regard to acquiescence and delay will apply as in the former cases.[41]

(b) **Non-agricultural leases.**—In the territories to which the Transfer of Property Act (IV of 1882) extends, the rules governing the relations of lessors and lessees, in the case of non-agricultural leases, are, in the absence of a contract or local usage to the contrary, contained in that Act. A lessee is bound to keep and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put into possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left.[42] The phrase 'irresistible force' may be taken to include that fire, tempest, flood and violence which renders the lease voidable at the option of the lessee.[43]

---

34. *Jugal* v. *Deoki Nandan*, 9 A., 88 (1886).
35. *Venkayya v. Ramasami*, 22 M., 39 (1898).
36. *Noyna Misser* v. *Rupikun*, 9 C., 609 (1882).
37. *Noyna Misser* v. *Rupikun*, 9 C., 610, 611 (1882).
38. *Kunhamed* v. *Narayanan Mussad*, 12 M., 320 (1888).
39. *Lakshmana* v. *Ramchandra*, 10 M., 351 (1889).
40. *Surendra Narain Singh* v. *Hari Mohan Misser*, 31 C., 174 (1903).
41. *Noyna Misser* v. *Rupikun*, supra.
42. Act IV of 1882, s. 108, cl. (*m*).
43. Act IV of 1882, s. 108, cl. (*e*); see *Kunhayen Haji* v. *Mayan*, 17 M., 98 (1893).

CENTRAL LIBRARY

The general rule of English Law being that personal chattel once annexed to the freehold become part of it, and may not be again severed without the consent of the owner of the inheritance, it is waste if a tenant for life or years who has annexed a personal chattel to the freehold afterwards takes it away. But exceptions have been engrafted on the general rule in favour of trade-fixtures, and fixtures set up for ornament or domestic convenience. The exception, however, at Common Law in favour of trade does not extend to buildings which have been let into the soil, even if used for trading purposes: though now by Statute buildings are rendered removable in certain cases.[44] In India the law with regard to fixtures and the commission of waste by their removal has no importance in the case of landlords and tenants, for, in the absence of a contract or local usage to the contrary, a lessee is entitled to remove at any time during the continuance of the lease *all* things which he has attached to the earth; provided he leaves the property in the state in which he received it.[45] Under the interpretation given to the phrase 'attached to the earth'[46] a lessee may remove things rooted in the earth, as in the case of trees and shrubs, imbedded in the earth, as in the case of walls or buildings and things attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached subject to the proviso above-mentioned.

The distinctions, therefore, which exist in English Law between things which are and things which are not tenant's fixtures, that is, things which he may or may not remove during his tenancy, cease to have significance in this country, in which a tenant has, as against his landlord, the complete disposal of things which he has attached to the earth and as to which therefore there can be no waste. The privilege of removal must, by the terms of the section (as also under English Law in the case of removable chattels), be exercised during the continuance of the tenancy. There is no right to come upon the land after the expiration of the lease for the purpose of their removal.

Similar rights exist with regard to emblements. When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines and to free ingress and agress to gather and carry them.[47]

Buildings, as already mentioned, are covered by the provision contained in section 108, cl. (*h*) of the Transfer of Property Act, and may be removed by the tenant. The general rule of English Law expressed by the maxim *quid-quid plantatur solo cedit solo,* namely, that whatever is annexed to the earth becomes an accession to the freehold and irremovable, has been held not to prevail in this country outside the Presidency-towns and to be even therein Subject to certain limitations.[48] The question, however, of the applicability of the maxim has become of diminished importance since the passing of the Transfer of Property

---

44. Kerr, *Inj.*, (6th ed.), p. 58.
45. Act IV of 1882, s. 108, cl. (*h*).
46. *Ib.*, s. 3.
47. Act IV of 1882, s. 108, cl. (*i*).
48. See *In the matter of Thakoor Chunder Paramanick*, B.L.R., Sup. Vol. F.B., 595 (1866); *Juggul Mohini Dassee* v. *Dwarka Nath Bysack*, 8 C., 582 (1882); *Mahalatchmi Ammal* v. *Palani Chetti*, 6 Mad. H.C.R., 245 (1871); *Akilandammal* v. *Venkatachala Mudali*

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Act which by section 51 secures to *bona fide* holders under defective titles the value of improvements made by them; and by section 108, cl. (*h*), enables a lessee to remove during the continuance of the tenancy all things which he has attached to the earth, including therein buildings erected by him.

The tenant must not commit acts of voluntary waste and may be restrained by Injunction from so doing.[49] The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto.[50] A tenant who uses the premises in a reasonable and proper manner, having regard to the purpose for which they were demised, is not liable as for waste. But he may not change the nature of the property or use it in a manner inconsistent with the purpose for which it was demised.[51] Waste in buildings may consist either in pulling them down or suffering them to go to decay. An alteration of buildings which changes their nature and character is waste.[52] In the undermentioned case[53] the Court refused a mandatory Injunction at the suit of the *Zemindar* for the removal of a wall recently constructed inside their house by tenants of a house in a town; the position of the tenants being that they and their predecessors in title had paid no rent for generations, and were only liable to ejectment in the event of the site occupied by them being cleared of buildings.

A lessee for years has not, in the absence of express words, power to remove and sell the soil, except in the case of mines, quarries or pits open when he came in. To allow the opening of new quarries or mines there must be a power or liberty on that behalf, and such a power or liberty is to be usually found in every quarrying or mining lease.[54] If an indenture made subsequent to the original lease operates as a fresh demise of the premises leased in their condition at the date of the indenture and at such date there are quarries and pits open on the premises, the lessee, whatever may have been his original rights, is entitled to continue to work them. But, if there be a mere confirmation of the original lease, it will not operate so as to make the estate confirmed subject to the incidents which it would have had if granted in its condition at the date of the confirmation.[55] If the lessee of a mine works it so as to cause subsidence of the surface an Injunction will be granted.[56] Where the purchaser of the

---

[*ib.* 112 (1871)]; *Russick Lall Muddack* v. *Lokenath Kurmokar*, 5 C., 691 (1880); *Parbutty Bewah* v. *Woomatara Dabee*, 14 B.L.R., 201 (1874); *Dunia Lal Seal* v. *Gopi Nath Khetry*, 22 C., 825 (1875).

49. As to permissive waste and covenant to repair, *see* Act IV of 1882, s. 108, cl. (*m*); Kerr, *Inj.*, (6th ed.), pp. 57-58.

50. Act IV of 1882, cl. (*o*).

51. See cases cited, *ante*, with respect to non-agricultural leases.

52. Kerr, *Inj.*, (6th ed.), p. 55; *Ramchandra Vasudevshet* v. *Babaji Kusaji*, 15 B., 73 (1890). See *Doherty* v. *Allman*, 3 App. Cas., 709.

53. *Bhagwan Das* v. *Muhammad Yahia*, 35 A., 292 (1913).

54. In re *Purmanandas* v. *Jeewandas*, 7 B., 109, 116, 117 (1882).

55. *Ib.*, 117, 118.

56. *Ramjas Agharwallah* v. *Brajo Mohan*, 19 C.W.N., 887 (1914); 20 C.L.J., 538.

CENTRAL LIBRARY

right of a lessee of a coal mine claims the right to take away the entire coal the Court may grant an Injunction if the action of the purchaser would constitute a breach of contract between lessor and lessee.[57]

A lessee must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purposes.[58] So it was held prior to the passing of the Transfer of Property Act that a tenant of non-agricultural land, having nothing in the nature of a protected and permanent tenure or holding therein, was not entitled to erect *pucca* buildings without the consent, and against the wishes of the landlord, on such land, and might be restrained by Injunction from erecting such buildings.[59] This is not, however, the law in England, for, unless it can be shown that such building is an injury to the inheritance, the lessee of land who erects a building thereon without the consent of his lessor does not commit waste. A tenant may therefore in that country lawfully erect buildings which improve the value of the land.[60]

Although it may be proved that the tenant has altered the character of the land so as permanently to injure the interest of the landlord, or has otherwise committed a breach of his duties towards him, it does not follow that in all cases the latter will have a remedy by Injunction. For, by standing by and allowing the tenant to go on with the work without objection, he may disentitle himself to the assistance of the Court.[61] Further, as the granting of an Injunction is an act depending upon the discretion of the Court, that discretion will be exercised with regard to all the circumstances of the case—the covenants (if any) entered into by the parties, their relative interests, the length of the demise, the nature of the property and the waste complained of.[62] If there be a covenant touching the performance or non-performance of an act, an Injunction will issue against the breach of covenant. If there should be no ground for interposing by reason of a breach of contract, there may still, however, be grounds for interposing on the ground of waste.[63] Where there is breach of an express covenant it was said in the case now cited that there is no question of convenience or amount of damage.[64] As, however, observed in preceding portions of this book, it would appear that under the Specific Relief Act the principles governing the issue of Injunctions in cases of contract and tort are substantially the same, and in the one case as in the other the Court will consider the amount and nature of the damage. If, however, possession of land be given upon an express bargain that a thing shall or shall not be done there, as a general rule, a Court of Equity would not do its duty if it did not enforce the contract, because mere damages

---

57. *Ib.*

58. Act IV of 1882, s. 108, cl. (*p*).

59. *Jagun Nath Bysack* v. *Prosonno Coomar Chatterjee*, 9 C.L.R., 221 (1881); this decision was reversed on appeal as it was held that the defendants were entitled to a right of occupancy, 10 C.L.R., 25 (1881).

60. *Jones* v. *Chappell*, L.R., 20 Eq,. 539; neither this case nor that of *Doherty* v. *Allman*, L.R., 5 App. Gas., 709, have any application to agricultural holdings; *Ramanadhan* v. *Zamindar of Ramnad*, 16 M., 409 (1893).

61. Act 47 of 1963, s. 41; *Noyna Misser* v. *Rupikun*, 9 C., 609, 610 (1882).

62. See *Doherty* v. *Allman*, 3 App. Cas., 709.

63. *Ib.*, 718.

64. *Ib.*, 720.

CENTRAL LIBRARY

would not there afford a sufficient or adequate remedy.[65] In other words, express covenants will be enforceable by Injunction not so much on the ground that the parties have so expressly contracted as for the reason that under such circumstances relief by damages will, as a general rule, not afford a sufficient or adequate remedy. Should the case be otherwise, it is conceived that damages will alone be given even in cases of express covenant.[66]

(iv) Dependent talookdar.—A dependent *talookdar* is a person holding a tenure intermediate between *ryots* and the *zemindar*, in which he has a beneficial interest, which is transferable by sale or otherwise. It was held in the case undermentioned that a *zemindar* cannot sue a dependent *talookdar* (the possessor of resumed *lakheraj* land) for confirmation of possession and for an Injunction to prevent him from committing waste. The only possession that a *zemindar* can obtain after a decree for resumption is a constructive one derived from the receipt of rent from the tenant. A *talookdar* has full pōwer to dig tanks in his tenure, in which he holds a beneficial interest; and the act is accordingly not one of waste requiring a perpetual Injunction.[67]

(v) Mortgagor and Mortgagee.—The mortgagor in possession, although he may exercise all acts of ownership, even to the extent of committing waste which does not impair the security,[68] will nevertheless, be restrained from such acts as depreciate the value of the premises and render the security insufficient. The principle upon which the interference is based as against a mortgagor in possession is the right of the mortgagee to his whole security unimparied during the life of the mortgage.[69] In conformity with the English rule above stated, the Transfer of Property Act provides[70] that a mortgagor in possession of a mortgaged property is not liable to the mortgagee for allowing the property to deteriorate, but he must not commit any act which is destructive or permanently injurious thereto, if the security is or will be rendered insufficient by such act. A security is deemed to be insufficient within the meaning of this section, unless the value of the mortgaged property exceeds by one-third or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.[71]

A mortgagee in possession must not commit any act which is destructive or permanently injurious to the property.[72] He is thus not liable for loss that

---

65. *Doherty* v. *Allman*, 3 App. Cas., at p. 729, *per* Lord Blackburn.

66. See *ib*, at p. 731.

67. *Mugnee Ram Chowdhry* v. *Baboo Gunesh Dutt Singh*, W.R. (1864), 275; see *Nicholl* v. *Tarinee Churn Bose*, 23 W.R., 299, 300 (1875).

68. *Kehetwich* v. *Marker*, 3 Mac. & G., 329.

69. v. *ante*, "*Waste*;" High, *Inj.*, §§ 693, 694, *et seq.*; Kerr, *Inj.*, (6th ed.), pp. 61-62; the same principles apply to mortgages of chattels ; High, *Inj.*, § 695 ; as to the meaning of "insufficient", see *King* v. *Smith*, 2 Ha., 244, and s. 66, Act IV of 1882 (Transfer of Property Act).

70. Act IV of 1882, s. 66. Similarly under s. 10 of the Easements Act he is not at liberty to impose upon the mortgaged property any easement, which renders the security insufficient.

71. The same proportion is fixed in s. 6 of Act II of 1882 (Trusts).

72. Act IV of 1882, s. 76 cl. (*e*).

CENTRAL LIBRARY

arises from accidental causes. He must use the mortgaged property with the care of a prudent owner. If the security is insufficient, he is entitled so long as he is acting *bona fide*, to make the most of the property for the purpose of discharging what is due to him as by cutting timber, opening mines and the like, but he does so at his own risk. If he incurs a loss, he cannot charge it against the mortgagor, and if he obtains a profit, the whole of that profit must go in discharge of the mortgage-debt. [73]

(vi) Vendors, purchasers and others.—The same principles which apply in respect of waste by a mortgagor in possession are also applicable as between a purchaser who has obtained possession before the payment of the purchase-moneys and the vendor. [74] In the absence of a contract to the contrary, the seller is bound between the date of the contract of sale and the delivery of the property to take as much care of the property and all documents of title relating thereto, which are in his possession, as an owner of ordinary prudence would take of such property and documents. [75] The same principles underlie the jurisdiction to prevent any waste which may tend to injure the security, where moneys due under a settlement are unpaid; [76] and as between the heir or executor of a debtor in possession and a judgment-creditor. [77] Further instances in which the Court will interfere by Injunction to restrain waste are waste by partners, [78] Hindu widows, [79] and members of an undivided Hindu family [80] respectively; and there are others. The important subject of waste and trespass by co-sharers is separately dealt with in the following paragraph.

77. Waste and trespass by co-sharers.—In India, where co-ownership is of more common occurrence than individual and separate ownership, the subject of Injunctions as between co-sharers assumes a position of far greater importance than is accorded to it in the English text-books, and requires special treatment with reference to the numerous decisions which exist upon the subject.

(i) Co-sharers.—Co-sharers may be co-parceners, joint-tenants or tenants-in-common. Where lands descend on an intestacy to several persons as co-heirs, the persons so inheriting are called co-parceners or tenants in co-parcenary. [81] Every joint-tenancy is created by one and the same title, and joint-tenants are said to be seized *per my et per tout*, i.e., *qui nihil habet et totum habet*. But they are potentially seized of aliquot parts for the purpose of alienation in severalty. Tenants-in-common are those who claim by several titles, or

---

73. Kerr, *Inj.*, (6th ed.), p. 65.

74. *Crockford* v. *Alexander*, 15 Ves., 138; *Petley* v. *Eastern Counties Railway Co.*, 8 Sim., 483; *Casamajor* v. *Sirode*, 1 Sim. & St., 381; Kerr, *Inj.*, (6th ed.), pp. 66-67.

75. Act IV of 1882 (Transfer of Property), s. 55, cl. (*e*); *see* Fry's *Specific Performance*, 6th Ed., p. 638; *Lysaght* v. *Edward*, 2 Ch.D., 510; *Phillips* v. *Sylvester*, L.R., 8 Ch., 173; *Egmont* v. *Smith*, 6 Ch.D., 469; *Clarke* v. *Ramuz* (1891), 2 Q.B., 456.

76. Kerr, *Inj.*, (6th ed.), p. 67.

77. *Leake* v. *Bickett*, 1. Y. & J., 339.

78. v. *ante*.

79. v. *ante*.

80. v. *post*.

81. Litt., §§ 341, *et seq.*; Sweet, *Law Dictionary*, 208.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

in several rights, though by one title, and have their possession in common.[82] Joint-tenants have both single possession and a single joint right to possess, but tenants-in-common have a single possession with several rights to possess. When a person having a right to possess a thing acquires the physical control of it, he necessarily acquires legal possession also.[83] Though in the books it is said of joint-tenants only that they are seized *per my et per tout*, the position seems to be equally applicable to all tenants who hold *pro indiviso*, whether they are co-parceners, joint-tenants or tenants-in-common. With respect to occupation and the right to occupy there is no distinction between tenants-in-common and joint-tenants.[84]

Joint-tenants or tenants-in-common, when they have not parted with possession, possess in law, and may possess in fact, according to their interest as owners. If a servant holds the property on their behalf, the *de facto* possession is exercised in the name and for the use of all of them. If one of them alone holds or occupies, his physical possession is that of an owner for his own interest and that of an agent as to the others. If there is a personal joint occupation, the physical and legal possession exactly coincide. In every case there is not a plural possession, but a single possession exercised by or on behalf of several persons.[85] A co-parcener who purchases from a trespasser stands in his shoes and his possession is not that of a co-parcener, but that of a trespasser, as was that of him from whom he purchased.[86]

Owing to the peculiarity of their legal right and possession, the subject of Injunctions between co-sharers requires separate treatment. Further, a co-sharer is entitled to possession and may therefore not be excluded: he is also entitled to enjoyment of the property in its actual condition and is therefore entitled to be protected from waste. Inasmuch as the greater number of the reported decisions deal with the right of a co-sharer to be protected both from waste and trespass, these torts have not been separately dealt with.

(ii) **Waste and trespass by co-sharers.**—Upon this subject it is necessary to separately consider the questions of (*a*) joint user; (*b*) remedies in respect of the abuse of joint property. In the first place, what may a co-sharer do or not do in respect of the joint estate: secondly, assuming that a co-sharer has done or threatens to do that which he should not do, what remedies are open to the other co-sharers in respect of such infringement of their rights.

(a) **Joint user.**—The acts of user may be (*a*) one to the profit of one co-sharer but without damage to the other co-shares; (*b*) with or without profit to one co-sharer, but with damage to the other co-sharers, such wrongful user

---

82. Comyn's *Digest*, Title, Estate undivided, K. 8. The term "my" signifies, not as has been often supposed, "a moiety," but "in the least." See note to *Murray* v. *Hall*, 7 M. Gr. & Scott, 455. "On dit communément que chaque jointenant n'a la propriété de *rien* et est proprietaire de tout; ce que veut dire qu'il tient tout conjointement et ne tient *rien* en particulier;" *ib*.

83. Pollock and Wright on *Possession*, p. 27.

84. Note to *Murray* v. *Hall*, 7 M. Gr. & Scott, 455; note to *Daniel* v. *Camplin*, 7 M. Gr., 172.

85. Pollock and Wright *on Possession*, p. 21.

86. *Muhammad Ali Jan* v. *Faiz Buksh*, 18 A., 361 (1896).

CENTRAL LIBRARY

entitling either to relief by a decree for joint possession, damages or Injunction. User of the first mentioned character is illustrated by the decision of the Privy Council in *Lachmeswar Singh* v. *Manowar Hossein*.[87]

Lachmeswar Singh v. Manowar Hossein.—In this case the plaintiffs and defendants were co-sharers. The defendant worked a ferry across a rievr at a point where it flowed through a joint *mouza*. The plaintiffs by their suit sought amongst other things a declaration that the river and ferry were within the area of the joint *mouza*, that the plaintiffs and the defendants might be declared entitled to receive the profits of the ferry in proportion to the extent of their respective shares, and that the defendans might be restrained from offering opposition to the possession of the plaintiffs. The Judges of the High Court were of opinion that the defendants were only entitled to hold possession and appropriate the profits of the ferry in proportion to their proprietary right in the *mouza*. But the Privy Council held that the defendant had made use of the joint property in a way quite consistent with the continuance of the joint ownership and possession. He had not excluded any co-sharer. It was not alleged that he had used the river for passage in any such way as to interfere with the passage of other people or that there had been any obstruction at the landing places, or that he had prevented any one else from setting up a ferry. So far from inflicting any damage upon the joint owners, the defendant had supplied them gratuitously with accommodation for passage. All that was complained of was that he had expended money in a certain use of the joint property and had thereby reaped a profit to himself. If, therefore, the defendant's use of the landing places and the river was consistent with joint possession, there was no reason why the plaintiffs should have any of the profits. They had not earned any and none had been earned by the exclusion of them from possession, as was the case in the leading decision of *Watson & Co. v. Ram Chand Dutt*.[88] By the defendant's acts they had lost nothing and had received some substantial convenience. Only if and when the defendant encroached upon their enjoyment of the joint property would they be entitled to relief. But upon the facts stated, they were entitled to none, and the suit was accordingly dismissed. It was *held* that property does not cease to be joint merely because it is used so as to produce more profit to one of the joint owners, who has incurred expenditure for that purpose, than to the others, where the latter are not excluded. Joint property being used consistently with the continuance of the joint ownership and possession, without exclusion of the co-sharers, who do not join in the work, there is no encroachment on the rights of any of them, as regards common enjoyment, so as to give ground for a suit. If, therefore, by the use of joint property there is a resulting profit to one sharer without loss to or exclusion of the others there is no such use as will give ground for a suit against him. There is no infringement of right and therefore no claim to relief.

(b) Abuse of joint property.—Where, on the other hand, there is wrongful exclusion or user causing damage to the co-sharers, there is an infringement of legal right, for which the Court will give relief. Though the Courts will

---

87. 19 C., 253 (1891). See also Ramaswamy Iyer's *The Law of Torts*, 8th ed. p. 110, and Sarkar's *Specific Relief Act*, 13th ed. pp. 446-452.

88. 18 C., 10 (1890).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

interpose in a proper case, they will in general be cautious of interfering with the enjoyment of joint estates as between their co-owners. [89]

When a party asks the Court to interfere between co-sharers, the Court will not look only at the *strict* rights of the parties, but will see what is fair and reasonable between them; and, if what has been done is neither unfair nor unreasonable, then whether it be in accordance with the strict rights of the parties or not, the Court has a discretion to leave the plaintiff to his strict remedy by partition or any other remedy he can maintain. [90] A man may insist upon his strict rights, but a Court of Equity is not bound to give its assistance for the enforcement of such strict rights. [91] The user must involve a real and substantial injury. The Court will not aid a complainant who applied upon trivial and frivolous, unreasonable or selfish grounds, or for purposes of vexation; for it is not every infringement or excess of user which will justify the interference of the Court. [92]

If, however, the user of a sharer with or without profit to himself, involves a legal injury and material damage to his co-sharers, the latter may have an action against him. But the nature of the relief which will be given will vary with the nature and effect of the acts done, and the intent and purpose with. and for which, they were committed and all the circumstances proved in the particular case.

Every tenant or owner in common is equally entitled to the occupation and use of the tenement or property. [93] All co-sharers may do what they like with their own, subject to the maxim "*sic utere tuo ut alienum non laedas.*" One of several co-sharers of joint undivided property is, as such holder of an undivided share until partition, the part-owner of every *biga* of the whole property, and by virtue of that right of ownership, he can claim either to occupy the land himself jointly with his co-sharers or their assignees or to insist that the land shall not be occupied and used by any person (excepting always persons having a right of occupancy) otherwise than with his assent. [94] As all are entitled to joint possession no one sharer can take exclusive possession of any part of the joint property to the ouster of the others or any of them. [95] But property does not cease to be joint merely because it is used so as to produce more profit to one of the joint owners, who has incurred expenditure for that purpose, than to the others, where the latter are not excluded. Joint property being used consistently with the continuance of the joint ownership and possession without exclusion of

---

89. *Lachmeswar Singh* v. *Manowar Hossein*, 19 C., 265 (1891).

90. *Mohima Chunder Ghose* v. *Madhub Chander Nag*, 24 W.R., 80 (1875).

91. *Lala Biswambhar Lal* v. *Rajaram*, 3 B.L.R., App., 67 (1869), *per* Peacock, C.J.

92. *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80 (1875); *Lala Biswambhar Lal* v. *Rajaram*, 3 B.L.R., App., 67 (1869) [explanation of this case in *Shamnugger Jute Factory* v. *Ram Narain Chatterjee*, 14 C., 189 (1886)]. *Joy Chunder Rukhit* v. *Bippro Churn Rukhit*, 14 C., 236 (1886).

93. Goyle's *Law of Injunction*, ed. 1987 pp. 143-145; Pollock and Wright on *Possession*, 21, 27, 87, A case of trespass by Commoner in *R.* v. *Brown Durant*, (1913), 2 Ch., 416.

94. *Stalkartt* v. *Gopal Panday*, 12 B.L.R., 197, 199 (1873), *per* Phear, J. [and see *Sheopershad Singh* v. *Leela Singh*, 12 B.L.R., 190 note (1873)] cited in *Lloyd* v. *Mussamut Bibee Sogra*, 25 W.R., 314 (1876).

95. *Ib.*

CENTRAL LIBRARY

the co-sharers who do not join in the works, there is no encroachment on the rights of any of them, as regards common enjoyment, so as to give ground for a suit.[96]

There may be and often is together with joint possession a peculiar exclusive possession of part of the joint property for the convenience of the particular sharers and with the continuing consent of the others. The rights of the co-sharers in such a case is laid down in the judgment of Phear, J., from which the following extract is taken:—"In my judgment, as I understand, joint possession under Hindu law, that peculiar exclusive possession of a part of a common dwelling-house or set of dwelling-houses which one member of a family obtains very commonly without an actual partition having been come to between the members of the family is a possession which must be referred to the continuing consent of his co-sharers. So long as no actual partition is come to either as a result of a suit, or formally between the parties themselves, or evidenced by long acknowledgment on the part of the members of the family, the possession is merely that which, for 'convenience' sake, is conceded by all the members jointly to each one of them; and it may be put an end to and a completely new arrangement come to, at any time, by the members of the family, if they think fit to make the change. As long, however, as this peculiar state of exclusive possession is allowed to remain, it seems to me that it must be taken that the acquiescing members of the family concede to the person, who has the exclusive possession, all reasonable rights of user of his separate plot, or separate portion of the dwelling-house, as is necessary for the ordinary purposes of residence, having regard, of course, to the circumstances of Hindu life. I think upon the authority of the cases (some of which have been cited) decided in this Court, we must hold that the concession on the part of the acquiescing members does not go to the extent of enabling the possessor of the dwelling-house to alter the character of the property, or to do anything with it, which is not consistent with such user of it as might be ordinarily expected to take place. If he desires to build a new and additional structure upon a portion of the house-ground it seems to me that he has no right to do so, and in that way materially to alter the condition of the property without obtaining the assent of his co-sharers. If this view be correct, assuming that the plaintiffs in the present suit had an exclusive possession of the courtyard, as an adjunct to the particular portion of the dwelling-house which they occupied, I think they would not be entitled to use that courtyard otherwise than for the ordinary purposes of, and incidental to, residence in their house, without the assent and knowledge of their co-sharers."[97]

Joint enjoyment of the property in its actual condition being the right of all, none may disturb that enjoyment either by directly excluding others, or by the commission of acts which have that effect,[98] or by acts which injuriously

---

96. *Lachmeswar Singh* v. *Manowar Hossein*, 19 C., 253 (1891).

97. *Sheopershad Singh* v. *Leela Singh*, 12 B.L.R., 188, 195, 196 (1873), *per* Phear, J.

98. *Sheopershad Singh* v. *Leela Singh*, 12 B.L.R., 197 (1873); *Nundun* v. *Lloyd*, 22 W.R., 74 (1874); *Macdonald* v. *Lalla Shib Dayal Singh Pandey*, 21 W.R., 17 (1874); a co-sharer is entitled to ask from his co-sharer to be allowed to enjoy his share of the property in any mode in which it could be enjoyed as an undivided share; and he has a right 'to insist that neither his co-proprietor nor anybody claiming through him should without his consent take exclusive possession of any portion of the joint property to which he has not a subsisting right of exclusive possession; *Nundun* v. *Lloyd*, 22 W.R., 74, 75 (1874). No one co-sharer

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

affect the position of the sharers by reason of material alterations [1] of the character and condition of the property enjoyed, made without the consent of the co-sharers.

So destruction of the subject-matter, waste attended by substantial damage, acts which permanently alter the character and condition of the land, as by building upon it, excavating tanks, or changing the nature of the cultivation,[2] are acts which, if committed by a co-sharer, amount to wrongs to the other part-owners giving them a right of action in respect of their commission. There is nothing in the law of Bengal which goes to prevent an undivided shareholder from granting a lease of his share to a third person. All that the other co-proprietor can insist upon is that the lessee should be prevented from dealing with the subject of the lease in any way different from that in which the lessor, his co-proprietor could deal with it;[3] and a joint shareholder or his lessee may contract with the *ryots* of the *zemindary* for any lawful purpose, even without the consent of the other co-proprietors. So the *ryots* may be induced by contract or offer of reward to cultivate any crop upon the land they hold, provided that they are holding those lands without any covenant or stipulation in their agreement with their *zemindar* to cultivate them in a particular way.[4]

(iii) **Remedies in respect of the abuse of joint property.**—Should a co-sharer abuse the joint property, or otherwise infringe the rights of his co-sharers, the latter may avail themselves of one or other or more of the following remedies, according as the circumstances of the case may require, *viz.* (*a*) partition; (*b*) declaration of right, damages, and account of profits; (*c*) decree for joint possession; (*d*) Injunction.

(a) **Partition.**—Partition, which effects a severance of the joint property and allots to each sharer his share of the joint estate in severalty, terminates the joint user. This remedy is available in every case and is free of any condition, such as those which effect some of the other reliefs hereinafter mentioned. By partition the parties put an end to and prevent the future occurrence of disagree-

---

in an undivided property has a right to possess himself of any portion of it to the exclusion and without the authority of his co-sharers and to deal with it and cultivate it as he will without their sanction. Every co-owner of such property is entitled to take a part in determining how it shall be used unless restrained by local custom or special agreement; *Lloyd* v. *Mussamut Bibee Sogra*, 25 W.R., 313 (1876), *per* Garth, C.J.

1. *Sheopershad Singh* v. *Leela Singh*, 12 B.L.R., 197 (1873); *Crowdie* v. *Bhikdaree Singh*, 16 W.R., 41 (1871). "A co-sharer in landed property has no right to do anything which alters the condition of the joint property without the consent of his co-sharers. If he thinks his interest in the property might be improved by works of a particular character, he can effect a partition and improve his particular share:" *Gooroodass Dhur* v. *Bejoy Gobind Burul*, 10 W.R., 171 (1868); s.c. 1 B.L.R., A.C., 108.

2. *Crowdie* v. *Bhikdaree Singh*, 16 W.R., 41 (1871); *Macdonald* v. *Lalla Shib Dayal Singh Pandey*, 21 W.R. 17 (1874). One shareholder alone in a joint estate or his assignee cannot claim to cultivate any portion of the property, which is not his zerait land, exclusively, without the consent of the other shareholders, merely upon the ground that he is willing to pay reasonable rent for it; *Nundun Lall* v. *Lloyd*, 22 W.R., 74 (1874); *Lloyd* v. *Mussamut Bibee Sogra*, 25 W.R., 313, 314, 315 (1876).

3. *Macdonald* v. *Lalla Shib Dayal Singh Pandey*, 21 W.R., 17 (1874).

4. *Ib.*

CENTRAL LIBRARY

ment or mischief arising from the joint user. In some cases this is the only remedy available.

In those cases in which the action of one co-sharer, though not amounting to a legal injury, is not assented to by another, the only remedy is for the party to partition the land, so as that all shall hold exclusively that which represents their respective shares. The law provides the means by which common lands may be lawfully partitioned in a proceeding in which all the co-sharers will get their fair quantum of the common land, having regard to possession, quality and the amount of their shares. And unless a plaintiff brings his case within the purview of the principles hereinafter mentioned, the Court in its discretion will leave him to his strict remedy by partition or any other remedy he can maintain.[5] A suit for partition is often the best means of settling difficulties between co-sharers, but a plaintiff's rights are not limited to that. Upon a proper case, he may be entitled to a decree for joint possession, damages and Injunction, or some one or other of these reliefs.[6]

(b) Declaration of right; account of profit; and damages.—Assuming that partition is not desired, other remedies not involving partition are open to the co-sharer, *viz.*, a suit for a declaration of right, for account of profits, and damages, for joint-possession, and an Injunction.

A suit may be brought which seeks some or all of these reliefs.[7] If one co-owner of land derives gain by committing waste on the common property, he is liable to account to the other owners for their shares of the money so obtained.[8] Damages may be given for an infringement of right causing injury, as by wrongful cultivation,[9] erection of buildings,[10] excavations, and the like.

It may be that a sharer has in some respects interfered with the right of his co-sharer as a tenant-in-common; and it may also be that he has thereby rendered himself liable to an action for damages at the instance of that co-sharer. But the Court will not on that account alone issue an Injunction against that sharer, for the circumstances of the case may be (and in this class of cases generally are) such, that though there is an infringement of a right, the proper remedy for such infringement lies in damages.[11]

(c) Decree for joint possession.—A suit to recover possession is not maintainable against one co-sharer in respect of property still joint and undivided,

---

5. *Lala Biswambhar Lal* v. *Rajaram*, 3 B.L.R., App., 67 (1869); *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80 (1875); *Joy Chunder Rukhit* v. *Bipro Churn Rukhit*, 14 C., 236, 239 (1886); *Shadi* v. *Anup Singh*, 12 A., 436, 437 (1889); *Sheopershad Singh* v. *Leela Singh*, 12 B.L.R., 190, *note* (1871).

6. *Bhaygo Mutty Bibee* v. *Mahomed Wasil*, 25 W.R., 315 (1876).

7. *Bhaygo Mutty Bibee* v. *Mahomed Wasil*, 25 W.R., 313 (1876); *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 218, 219 (1887).

8. Kerr, *Inj.*, (6th ed.), p. 83.

9. *Watson & Co.* v. *Ram Chand Dutt*, 18 C., 10 (1890).

10. *Shamnugger Jute Factory* v. *Ram Narain Chatterjee*, 14 C., 189 (1886).

11. *L. J. Crowdy* v. *Inder Roy*, 18 W.R., 408 (1872); *Watson & Co.* v. *Ram Chand Dutt*, 18 C., 10; and both damages and an Injunction may be given; *Bhaygo Mutty Bibee* v. *Mahomed Wasil*, 25 W.R., 313 (1876).

CENTRAL LIBRARY

the usual remedy being a suit for a partition and account; [12] but in a proper case a suit to recover *joint* possession and an Injunction may be maintained. [13] In order to maintain a suit for possession by one shareholder against another, something amounting to an actual turning of the co-sharer out of possession or a refusal to let him enter must be shown. The acts should constitute a dispossession. But apart from the question of possession, if there be acts wrongful as between co-sharers, the Court will in some cases compel co-sharers to act equitably towards each other, even although they could not maintain a suit to recover possession, and without forcing them to a partition. [14]

In a suit to recover joint possession of an occupancy-holding in respect of his share by a co-sharer landlord on the ground that the defendant acquired no title by the purchase of the said holding as it was not transferable by custom, and that there was an abandonment of the holding by the former tenant, the defence (*inter alia*) was that the plaintiff was not entitled to joint possession, and that he could not get any relief except by a suit for partition. *Held* that the plaintiff was entitled to the relief claimed, and that the claim for joint possession without partition was maintainable. [15]

(d) **Injunction.**—An Injunction may be granted in the case of trespass, where there has been an ouster of the co-sharer, and in the case of waste, where there is an infringement of the legal right constituting, in the case of structures and excavations, a substantial and material injury not remediable upon partition; and in the case of cultivation, where there has been an exclusion of the shareholder from enjoyment, such exclusion being in denial of his title. [16]

(iv) **Principles upon which Injunctions are granted in the case of co-sharers.**—The English Courts have considered it to be against the policy of the law to entertain claims or cross-claims for damages, or for Injunctions between joint-tenants or tenants-in-common, a remedy being open to the parties in the form of partition. The Court will not interpose to restrain waste in the case of co-parceners, joint-tenants and tenants-in-common, unless it amounts to destruction, waste or spoliation, or unless the wrong-doer is insolvent or incapable of paying to the other the excess of the value beyond his own share. [17]

The Court will also interfere to restrain waste where the wrong-doer is occupying tenant to the other; [18] but such a case is no real exception to the general rule; for, by the agreement to hold as occupying tenant, there is a contract which establishes a relation similar to that of landlord and tenant to one

---

12. *Gobind Chunder Ghose* v. *Ram Coomar Dey*, 24 W.R., 393 (1875).
13. *Bhaygo Mutty Bibee* v. *Mahomed Wasil*, 25 W.R., 313, 315 (1876).
14. *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80 (1875).
15. *Dilbar Sardar* v. *Hossein Ali Bepari*, 26 C., 55 (1899).
16. v. *post*.
17. Kerr, *Inj.*, (6th ed.), p. 63 ; Sarkar's *Specific Relief Act*, 13th ed. p. 446-452 ; Goyle's *Law of Injunction*, ed. 1987 pp. 143-145.
18. *Twort* v. *Twort*, 16 Ves., 129. There is nothing to prevent one co-sharer being the tenant of all the others and paying rent to them as such. But the mere fact that one member of a family holds exclusive occupation of any part of the property, carries with it no undertaking to pay rent, in the absence of some agreement to that effect, express or implied. Mayne's *Hindu Law*, 11th ed p. 378.

CENTRAL LIBRARY

another.[19] If one tenant-in-common thinks proper by agreement with the other to hold the premises as an occupying tenant, the effect of that contract being to exclude the other from entry for any purpose, the tenant has thereby prohibited any act by himself but such as an occupying tenant may do. If the result of that voluntary obligation on his part is, that he cannot deal with his own moiety as he might if he had not incurred that obligation, the question is, whether he must not get rid of that relation, so voluntarily contracted, before he can exercise that original power, which he had before he entered into that contract.

One reason, in addition to those of general policy, upon which the Courts have hesitated to interfere on the ground of waste is that if it does so interfere, it must proceed to apply the principle throughout; to grant the whole equitable relief; for instance, to prevent felling trees planted for ornament; which would be a strong measure in such a case; yet the Court, if it touches the subject, must go to that extent.[20] So also it has been held in this country that the Court will not generally interfere by Injunction to control a tenant-in-common dealing with joint property which is rightly in his possession, unless those dealings threaten to be of a destructive character.[21]

If one tenant-in-common is doing merely what any other owner of land might do, the other cannot have an Injunction merely on the ground that he does not choose to do so, since each tenant has a right to enjoy as he pleases. A joint owner cannot prevent by Injunction the carrying out of a necessary work by another co-owner in property held in common.[22] But if the act amounts to destruction, the Court will interfere.[23] The destruction of the thing itself is an ouster.[24] When there are acts of positive and actual destruction, an Injunction will be granted, since such acts are not done in the legitimate exercise of the enjoyment arising out of the nature of the party's title to that which belongs to him and the other party.[25] It is apprehended that the Courts of this country will also interfere where the wrong-doer is insolvent or incapable of paying to the other the excess of the value beyond his own share.

As regards trespass, it is a peculiar incident of the estate of tenants-in-common that there cannot be a trespass as between themselves, unless the act amounts to ouster, for each of them is alike entitled to use and enjoyment (subject, it may be, to a subsequent duty of accounting for profits), and all acts of use and enjoyment in an ordinary course and according to the nature of the subject-matter are presumed, in obedience to a well-known principle, to be done in exercise of that lawful right.[26]

---

19. But if there be no express contract of tenancy, the occupation of one tenant-in-common does not establish that relation between him and the others. See *Bailey* v. *Hobson*, L.R., 5 Ch. App., 180.

20. *Twort* v. *Twort*, 16 Ves., 128, 132.

21. *Stalkartt* v. *Gopal Panday*, 2 W.R., 168, 169, 179 (1873); s. c. 12 B.L.R., 197.

22. *Kuttayan* v. *Mammanna*, 35 M., 681 (1911).

23. *Twort* v. *Twort*, 16 Ves., 128; *Hole* v. *Thomas*, 7 Ves., 589; *The Durham and Sunderland Railway* v. *Waun*, 3 Beav., 119, cited in *Stalkartt* v. *Gopal Panday*, 20 W.R., 168, 169 (1873); *Arthur* v. *Lamb*, 2 Dr. & Sm., 428.

24. *Wilkinson* v. *Haygarth*, 16 L.J., N.S., Q.B., 103.

25. *Twort* v. *Twort*, supra, 131.

26. Pollock and Wright on *Possession*, p. 87; Clerk and Lindsell on *Torts*, 15th ed. para 22-18.

CENTRAL LIBRARY

And though the Courts will not generally interfere between co-tenants on account of dealings with the common property not involving destructive waste, it will in cases of ouster compel a tenant to allow his co-tenant a proper share in the enjoyment of the joint property when the former has excluded the latter therefrom.[27] But in the case of exclusion caused by proper cultivation, to entitle the plaintiff to an Injunction by reason of trespass and ouster, that ouster must have been in denial of the plaintiff's title.[28]

In England, inasmuch as co-tenancy is an uncommon form of estate, and the Courts have not shown any special facility in granting Injunctions between co-tenants, such Injunctions are of very rare occurrence. In this country, as might be expected, questions of this nature arise much more frequently between co-owners than in England, and the decided cases are numerous. There are many cases in which an Injunction has been granted, and in some[29] very general language has been used as to the right of a part-owner to restrain his co-owner.[30] So the proposition that one co-sharer has an absolute right as a general rule of law to say to his co-sharer, "you shall not cultivate that land in any way without my consent," and to enforce that right, at least in the absence of any special circumstances, by claiming an Injunction in a Court of Law, has for its support, the language of some learned Judges in delivering judgment upon cases before them.[31] But it may well be open to consideration, whether the expressions used in some of these cases, if taken as unqualified propositions of law and without regard to the context, are wholly correct. On the other hand, a rule in conformity wtih the English decisions has been acted upon in a number of cases,[32] and it has been contended upon the authority of English decisions, that an Injunction between co-sharers is a thing which either ought never to be granted, or at any rate only under very unusual circumstances.

"But though, of course, the principles on which English Courts administer the remedy by Injunction must be taken to be those which the Legislature meant to affirm in the Specific Relief Act, still the circumstances of this country are very different from those of England; and it would be a dangerous thing to assume that, because the Courts in England have very rarely found it necessary to grant an Injunction as between co-sharers, in order to prevent multiplicity of suits or upon any other grounds, Courts in this country may not properly be somewhat less rigid in doing so. The circumstances of the country are different; the positions of co-sharers and persons with partial interests in land are very different from those in England; and the interests of part-owners may here require protection by Injunction in classes of cases in which it is not necessary to grant it in England. There is a large number of cases which go to show that the remedy by Injunction may in this country be given in cases between co-sharers, when the circumstances of the cases are such as to render it necessary, in order to

---

27. *Stalkartt* v. *Gopal Panday*, 20 W.R., 168 (1873).
28. *Watson & Co.* v. *Ram Chand Dutt*, 18 C., 10 (1890).
29. See cases cited in *The Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee*, 14 C., 200, *per* Wilson J. (1886).
30. *Ib.*
31. *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 219, *per* Wilson J. (1887).
32. See cases cited *per* Wilson, J., in *The Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee*, 14 C., 201 (1886).

CENTRAL LIBRARY

secure those objects which, according to the law, should be secured by Injunction. Particularly, since the passing of the Specific Relief Act, an Injunction may properly be granted, if on a consideration of the facts of the case, the Court thinks that that remedy is necessary in order to prevent repetition of injury and multiplicity of suits." [33]

The Court has therefore refused to accede to either of these extreme propositions. [34] And with regard to the conflict of cases and in particular to those cases which appear to lend support to either of the extreme propositions mentioned, it must be remembered that the observations therein should be read and understood with reference to the particular facts of the case dealt with and the particular remedy sought in that case. [35] It has been said that until the decision of the Privy Council in the case of *Watson & Co.* v. *Ram Chand Dutt* [36] there seemed to be but little authority in decided cases to show how far Courts of Justice will interfere to control the use of property as between joint owners, or how far they will leave those who are dissatisfied with its use to seek a remedy by partition. [37] By that case and the decision in *Lachmeswar Singh* v. *Manowar Hossein,* [38] the Privy Council have practically settled the rights of owners of lands which are held jointly. [39] The latter of the Privy Council cases stated the summary of the decision in the former suit as follows, namely, that the Courts should be very cautious of interfering with the enjoyment of joint estates as between their co-owners, though they will do so in proper cases. [40] The Privy Council have also intimated that the rule as to rights of persons holding land in common in Bengal was hardly to be found in the analogy of English cases, but might be derived from the direction in section 9 of Bengal Regulation VII of 1832, namely, that where there should be no specific rule, the case must be decided according to justice, equity and good conscience. [41] In disputes between members of a joint Hindu family with respect to joint property, the exercise of the Court's jurisdiction to grant relief by Injunction should be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster. [42]

Some particular instances of use of joint property in which the interference of the Court has been sought are given in the following pages. The cases therein cited must, however, be read in the light of the principles hereinbefore stated.

(a) Cultivation.—Cultivation may, or may not, according to the circumstances, constitute an act entitiling a co-sharer to relief by damages or

---

33. *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 214, 219, 220 (1887), *per* Wilson, J.

34. *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 219 (1887).

35. *Nocurry Lall Chuckerbutty* v. *Bindaban Chunder Chuckerbutty*, 8 C., 709 (1882), where a classification is given of the case-law.

36. 18 C., 10 (1890); s. c., L.R., 17 I.A., 110.

37. *Lachmeswar Singh* v. *Manowar Hossein*, 19 C., 264 (1891), *per* Lord Hobhouse.

38. 19 C., 253; s. c., L.R., 19 I.A., 48 (1891).

39. *Rohini Singh* v. *J. Hodding*, 21 C., 340, 343, 344 (1893), *per* O'Kinealy and Ameer Ali, JJ.

40. 19 C., at p. 265 (1891).

41. *Watson & Co.* v. *Ram Chand Dutt*, 18 C., 17 (1890).

42. *Anant Ramrav* v. *Gopal Balvant*, 19 B., 269 (1897); see also as to the rights of co-parceners *inter se*, Mayne's *Hindu Law*, 11th ed. pp. 375-376 § 275. *Ganpat* v. *Annaji*, 23 B., 144 (1898).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Injunction. In an early case[43] it was held that mere infringement of right by reason of cultivation will not support an Injunction, and that the remedy for such infringement lay in damages.[44] In subsequent cases, which will be shortly noticed, the question was variously dealt with, and it was in large part finally settled by the leading case decided by the Privy Council of *Watson & Co.* v. *Ram Chand Dutt*.[45] In that case the Watsons, who were originally in possession of the whole *mouza* but at the date of suit had two annas only, had built factories, reclaimed waste land, and cultivated indigo thereon. The District Judge at the instance of their co-sharers granted an Injunction against them prohibiting the growing of indigo. The High Court upon the ground of ouster upheld the Injunction, but modified it, so that it became an Injunction against growing indigo in such a manner as to exclude the co-sharers. The Privy Council held that there was no ouster involving denial of title, the exclusion of the co-sharers not being in denial of their title, but simply with a view to self-protection, and refused an Injunction but gave compensation only. It laid down the following rules :— (*a*) That the Courts should be cautious of interference with the rights of co-sharers; (*b*) that the circumstances of this country and its law were to be considered; (*c*) that where a co-sharer is in actual occupation of land not actually used by another cultivating in a proper course of cultivation, and that sharer resists a co-sharer, not in denial of title, but with a view to self-protection there should be no decree for joint possession or Injunction, but damages only should be given.

In other cases an Injunction has been granted against a particular form of cultivation. So in the case cited below[46] the plaintiff sued to restrain defendant from growing indigo on (*a*) *khoodkhast* land, and (*b*) on lands which were the *ijmali ryoti* lands of all the joint proprietors of the village in which plaintiff and the defendant were co-sharers. In respect of (*a*) *khoodkhast* land the defendant clearly had no right. In respect of (*b*) namely, the other land, such land was *ryoti* which the defendant had attempted to cultivate by force. The Court held that, if no immediate injury were likely to arise from the cultivation of the *ijmali* lands with indigo, it would probably be advisable to leave the plaintiff to his remedy by an action for damages, but that there was an immediate injury as the produce of the lands was hypothecated for the rent: that if a crop of indigo was substituted for the ordinary crop, it would become valueless to all but the particular persons who have the means of converting the plant into the manufactured article, and an Injunction was granted against the cultivation of indigo without the consent of all the proprietors or of the ryots who held tenures on the *ijmali* lands. The facts of this case appear not to be within the principle in the leading decision. The wrong-doer was not in actual occupation of land not

---

43. *Crowdy* v. *Inder Roy*, 18 W.R., 408 (1872).

44. Ouster is a question of fact and mere cultivation is not ouster. *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 217, 218 (1887).

45. 18 C., 10 (1890), s. c. in High Court, 15 C., 214 (1887).

46. *Crowdy* v. *Bhikdaree Singh*, 16 W.R., 41 (1871). This decision merely lays down that one co-sharer cannot interfere with the ownership of another without his consent, whether (1) he interferes by taking *khas* (exclusive) possession of the land which belongs to both jointly, or (2) interferes by disturbing the occupation of joint ryots against the will of those ryots. *Per* Phear, J., *Fureedoonissa* v. *Ram Onogra Singh*, 21 W.R., 18 (1873).

CENTRAL LIBRARY

used by another. The ryots were in occupation. There was an attempt to cultivate by force. There was other injury than that which is involved in the alteration of the condition of property by mere change of cultivation. The rights both of the ryots and co-proprietors were infringed, and the value of the land as a security was diminished.

In a subsequent case [47] it was held that, if a co-sharer has wrongfully taken exclusive possession of portion of the joint property and has been cultivating indigo thereon without the consent of the co-sharers, the plaintiff would have the right to ask that he be turned out of exclusive possession, and also that he be prohibited for the future from doing anything on the land which is the subject of suit, which a co-sharer of the plaintiff has no right to do.

This particular case was remanded to the lower Court for trial upon the issue of the alleged wrongful exclusive possession. The allegation was that the defendant had cultivated the land after wrongfully turning the ryots out of it. The Court held that, if that allegation could be made out in fact, the plaintiff would be entitled to an order ejecting the defendant from exclusive possession and an Injunction restraining him for the future from doing any act which was inconsistent with the joint proprietorship. The facts in this case also appear to be distinguishable from those in the leading decision, there being a forcible ouster both of the co-sharers and the ryots.

To support a claim for an Injunction the plaintiff must show that he himself wished to cultivate the land jointly with his co-sharer, that he has not been consulted as to its cultivation, and that he objects to its being cultivated in a particular manner on his behalf jointly with others. It is not sufficient to say that as joint proprietor he does not wish that indigo should be grown, not on his behalf but by or for any one in the *mouzah*.[48] A defendant has no right to complain of delay, where it has operated rather as an advantage to himself.[49] In other cases an Injunction against cultivation has been granted under circumstances somewhat similar to those in the leading decision.[50]

(b) Buildings.—As in the case with regard to the right of cultivation, the decisions respecting the erection of buildings are of a varying character. In some, general language is used which it is not easy to reconcile with the limitations contained in others, even after making allowance for the peculiar facts and circumstances of each case.

Every co-proprietor has a right of veto to forbid anything being done to the common property without his consent.[51] With a view to enforce this right

---

47. *Macdonald* v. *Lalla Shib Dyal*, 21 W.R., 17 (1874).

48. *Nundun Lall* v. *Lloyd*, 22 W.R., 74 (1874); see *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80 (1875). In *Ram Chand Dutt* v. *Watson & Co.*, 15 C., 220 (1887), the Court doubted whether cultivation of indigo could be absolutely restrained, but granted an Injunction restraining its cultivation in such a manner as to exclude the co-sharer.

49. *Lloyd* v. *Bibee Sogra*, 25 W.R., 313 (1876).

50. *Stalkart* v. *Gopal Panday*, 20 W.R., 168 (1873); s.c., 12 B.L.R., 197; *Lloyd* v. *Bibee Sogra*, 25 W.R., 313 (1876), where a decree for joint possession, damages and injunction were given upon the ground that it would be ineffectual to leave the plaintiff to an action for damages from time to time.

51. *Jankee Singh* v. *Bukhoorie Singh*, S.D.A. (1856), 761. [The proposition is too widely stated in the matter of the petition of *Thakoor Chunder Paramanick*, B.L.R., Sup.

CENTRAL LIBRARY

a person can sue to restrain his co-sharers from building on the common property.[52] One of several co-sharers of joint undivided property has no right to erect a building on land which forms a portion of such property so as to materially alter the condition thereof without the consent of his co-sharers.[53] A co-sharer who has purchased the rights of ryots having a right of occupancy for agricultural purposes may not do that which they themselves could not have done, namely, convert the land into a dwelling-house and its appurtenances.[54] Many, and perhaps the majority, of the decisions on this point, in accordance with the terms of the Specific Relief Act, have limited the issue of an Injunction to cases where the building causes a material and substantial injury not remediable by compensation or partition.[55] In the first place, the Court will ascertain whether the plaintiff has any strict right to prohibit the defendant from the particular act complained of. Then, if such right be made out, the question arises whether he is in a position to enforce that right and to ask the Court's assistance, and then in what form, if any, relief shall be given.[56] Relief, in the form of an Injunction, is in the discretion of the Court. The Court is not bound to grant an Injunction even if the defendant have exceeded his strict rights.[57] The Court will enquire into all the circumstances of the case, and will see what is fair and reasonable as between co-sharers; and, if what has been done is neither unfair nor unreasonable, then, whether it be in accordance with the strict rights of the parties or not, the Court has a discretion to leave the plaintiff to his strict remedy by partition or any other remedy he can maintain.[58] The act complained of must be injurious, and the term "injury" means something substantial, something that materially affects the position of the parties,[59] and which, in the case of an injury committed, cannot be remedied upon partition.[60] The Court may interfere in a proper case, as where the injury is of a permanent or recurrent character,[61] or where there is denial of title or exclusion, since such exclusion amounts to a forcible partition.[62]

Vol. 597, *n.* 6 (1866), the Court said "We are not prepared to accept this rule as law."] [Each sharer is entitled to every portion of the land; *Dwarkanath Bhooyea* v. *Gopeenath Bhooyea*, 12 B.L.R., 190 *n.* (1871).]

52. *Ib.*; followed in *Baboo Indurdeonarain Singh* v. *Toolseenarain Singh*, S.D.A. (1857), 765. See *Israil* v. *Samser*, 41 C., 436 (1913); 18 C.W.N., 176; 19 C.L.J., 47; *Hemanta Kumar* v. *Baranagar Jute Co.* 19 C.W.N., 442 (1914); 20 C.L.J., 441.

53. *Sheopershad Singh* v. *Leela Singh*, 12 B.L.R., 188, 191, 192 *n.* (1873); *Massim Mollah* v. *Panjoo Ghoramee*, 21 W.R., 373 (1874); *Guru Dass Dhar* v. *Bijaya Gobinda Baral*, 1 B.L.R., 108, A.C. (1868); and cases cited in last two notes.

54. *Jugat Chunder Roy Chowdhury* v. *Eshan Chander Banerjee*, 24 W.R., 220 (1875).

55. v. *post.*

56. *Jugut Chunder Roy Chowdhury* v. *Eshan Chunder Banerjee*, 24 W.R., 220 222 (1875).

57. *Massim Mollah* v. *Punjoo Gharamee*, 21 W.R., 373 (1874); *Jugut Chunder Roy Chowdhury* v. *Eshan Chunder Banerjee*, 24 W.R., 220 (1875).

58. *Mohima Chunder Ghose* v. *Madub Chunder Nag*, 24 W.R., 80 (1875).

59. *Joy Chunder Rukhit* v. *Bippro Churn Rukhit*, 14 C., 236, 238 (1886).

60. *Paras Ram* v. *Sherjit*, 9 A., 665 (1887).

61. *Rajendra Lall Goswami* v. *Shama Churn Lahori*, 5 C., 194 (1879).

62. *Guru Das Dhur* v. *Bijaya Gobinda Baral*, 1 B.L.R., 108 (1868); *Shadi* v. *Anup Singh*, 12 A., 436, 438 (1889); *Rajendra Lall Goswami* v. *Shama Churn Lahori*, 5 C., 188,

CENTRAL LIBRARY

But there is no such broad proposition as that one co-owner is entitled to an Injunction restraining another co-owner from exceeding his rights, absolutely and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the Injunction.[63] And the fact that the plaintiff has given notice of objection to what is theatened before it has been carried out, does not make the grant of the Injunction a matter of course.[64] A plaintiff is not entitled to judgment upon a ground which is inconsistent with the case set out in the plaint.[65] Where an Injunction has been granted, and there is an appeal against such order, it is for the appellant to show that the lower Court has exercised a wrong discretion, otherwise the Appellate Court will not interfere.[66]

The building may, or may not, have been erected at the date of suit.

In the first case, a mandatory Injunction is usually sought directing the demolition of the building. There is a considerable difference between a case in which the other co-sharers, acting with diligent watchfulness of their rights, seek by an Injunction to prevent the erection of a permanent building, and a case in which after a permanent building has been erected at considerable expense, a co-sharer seeks to have that building removed.[67] Even if the defendant have not a strict legal right to build upon the joint land, the case may not be one in which a Court of Equity ought to give its assistance for the purpose of having the wall pulled down. A man may insist upon his strict right, but a Court of Equity is not bound to give its assistance for the enforcement of such rights.[68] In a case in which, after a permanent building has been erected at considerable expense, a co-sharer seeks to have that building removed, the principle which seems to have been settled by the decisions of the Calcutta Court is this, that though the Court has a discretion to interfere and direct the removal of the building, this is not a discretion which must necessarily be exercised in every case; and, as a rule, it will not be exercised unless the plaintiff is able to show[69] (a) that injury has accrued to him by reason of the erection of the

---

190 (1879). See also *Massim Mollah* v. *Panjoo Gharamee*, 21 W.R., 373 (1874). Where a sharer is not entitled to exclusive possession an order of the Magistrate will not sanction it. *Rajendra Lall Goswami* v. *Shama Churn Lahori*, 5 C., 188 (1879).

63. *The Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee*, 14 C., 200 (1886) [followed in *Joy Chunder Rukhit* v. *Bippro Churn Rukhit*, 14 C., 236, 239 (1886)].

64. *The Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee*, 14 C., 200 (1886) [followed in *Joy Chunder Rukhit* v. *Bippro Churn Rokhit*, 14 C., 236, 239 (1886)].

65. *Nabin Chandra Mitter* v. *Mahes Chandra Mitter*, 3 B.L.R., App., 111 (1869).

66. *Shadi* v. *Anup Singh*, 12 A., 436, 438 (1889).

67. *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chuckerbutty*, 8 C., 708, 709 (1882); *Paras Ram* v. *Sherjit*, 9 A., 664 (1887).

68. *Lala Biswambhar Lal* v. *Rajaram*, 3 B.L.R., Ap., 67 (1869); *Massim Mollah* v. *Punjoo Gharamee*, 21 W.R., 373 (1874); *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80 (1875).

69. *Lala Biswambhar Lal* v. *Rajaram*, 3 B.L.R., Ap. 67; *Sri Chand* v. *Nim Chand Sahu*, 5 B.L.R., Ap., 25; *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80; *Joy Chunder Rukhit* v. *Bippro Churn Rukhit*, 14 C., 238 (1886); *Rajendra Lal Goswami* v. *Shama Churn Lahiri*, 5 C., 192 (1879); *Shadi* v. *Anup Singh*, 12 A., 437, 438; *Paras Ram* v. *Sherjit*, 9 A., 664 (1887); *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chuckerbutty*, 8 C., 708 (1882).

CENTRAL LIBRARY

building; [70] and (*b*) that there has been no acquiescence [71] or delay [72] on his part, and perhaps further [73] that he took reasonable steps in time to prevent the erection. Even if the defendant be in strictness not within his rights, and the house has been erected, the assertion of the plaintiff's strict right might be attended with loss to the defendant which would be out of proportion to the relief which the plaintiff asks for. The Court ought to enquire whether under all the circumstances the ends of justice cannot be satisfied by some remedy other than a mandatory Injunction. [74] The Court will then more readily interfere, if the buildings be of a *kachcha* character and of no value. [75]

The rule laid down by the decisions of the Calcutta High Court has been stated by the Allahabad High Court to be that when a joint owner of land, without obtaining the permission of his co-owners, builds upon such land, such buildings should not be demolished at the instance of such co-owners, unless they prove that the action of their joint owner in building upon joint land has caused them a material and substantial injury such as cannot be remedied by partition of the joint land. [76] And the mere circumstance of a building being erected by a joint owner of land without the permission of his co-owners and even in spite of their protest, is not sufficient in itself to entitle such co-owners to an Injunction, unless they can show that the building has caused such material and substantial injury as a Court of Equity could not remedy in a suit for partition of the joint land. [77] The Allahabad High Court, however, have more recently held that one of several joint owners of land is not entitled to erect a building upon the joint property without the consent of the other joint owners, and an Injunction may be granted, notwithstanding that the erection of such building may cause no direct loss to the other joint owners. [78]

One of two tenants-in-common of a party wall may have an Injunction to restrain alterations in the wall. [79] If a sharer without the consent and against the will of his co-sharer threatens or commences to erect a building upon the common property, in such a case, inasmuch as one co-sharer has no right without

---

70. *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chuckerbutty*, 8 C., 709 (1882); *Paras Ram* v. *Sherjit*, 9 A., 664 (1887).

71. *Jankee Singh* v. *Bukhooria Singh*, S.D.A. (1856), 761; *Baboo Indurdeonarain Singh* v. *Toolseenarain Singh*, S.D.A. (1857), 765; *Massim Mollah* v. *Punjoo Gharamee*, 21 W.R., 373, 374 (1874); *Shadi* v. *Anup Singh*, 12 A., 437 (1889).

72. *Shadi* v. *Anup Singh*, 12 A., 439 (1889).

73. *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chuckerbutty*, 8 C., 709, 710 (1882); *Paras Ram* v. *Sherjit*, 9 A., 664, 665 (1887).

74. *Massim Mollah* v. *Punjoo Gharamee*, 21 W.R., 373 (1874); *Jugut Chunder Roy Chowdhury* v. *Eshan Chunder Banerjee*, 24 W.R.., 220 (1875).

75. *Shadi* v. *Anup Singh*, 12 A., 436, 439 (1889).

76. *Paras Ram* v. *Sherjit*, 9 A., 665, 663, 666 (1887).

77. *Paras Ram* v. *Sherjit*, 9 A., 665, 666; *Joy Chunder Rukhit* v. *Bippro Churn Rukhit*, 14 C., 236 (1886).

78. *Naiju Khan* v. *Imtiaz-uddin* 18 A., 115 (1895).

79. *Kanakayya* v. *Narasimhula*, 19 M., 38 (1895); the head-note is liable to mislead. There was injury as for instance the exclusion of the plaintiff from the use of the top of the wall.

CENTRAL LIBRARY

the consent of the others to alter the condition of the joint property, he may be restrained by Injunction. The suit must, however, be brought by a party when either the infringement of his right is first threatened or commenced. If he stands by and suffers the building to proceed to a considerable extent his consent to the erection will be implied therefrom, and he must fall back on his remedy, if any, in the form of an action for damages, if any, done to the common property.[80] If a plaintiff raises no objection when the building is commenced, but stands by and allows the defendant to expend a considerable sum of money on the building before instituting his suit, an Injunction will be refused.[81] The cases above cited[82] must be distinguished from those in which a stranger has with knowledge of the plaintiff's exclusive title trespassed upon land by building thereon, and those to which the Equitable doctrine of estoppel by acquiescence would be applicable. The rules of Equity applicable to trespasses by strangers are different from those applicable in the case of co-sharers.[83]

(c) **Excavations.**—Similar considerations apply in the case of excavations by co-sharers as apply in the case of buildings. It must be shown that the excavation has caused a substantial injury materially affecting the position of the co-sharer,[84] and not remediable on partition,[85] before a mandatory Injunction will be issued directing the defendant to fill up a tank excavated by him on the joint land, and to restore that land to its former state.[86] The fact that a portion of the land on which a tank had been excavated by the defendant was fit for cultivation does not constitute an injury of a substantial nature such as would justify an order restoring the land to its former condition.[87] Where, in the case

---

80. *Jankee Singh* v. *Bhukhooree Singh*, S.D.A. (1856), 761; *Baboo Indurdeonarain Singh* v. *Toolsee Narain Singh*, S.D.A. (1857), 765; *Guru Das Dhar* v. *Bijoy Gobinda Baral*, 1 B.L.R., A.C., 108 (1868); *Shadi* v. *Anup Singh*, 12 A., 436 (1889).

81. *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chackerbutty*, 8 C., 708 (1882); *Holloway* v. *Sheikh Wahed Ali*, 12 B.L.R., 192*n*. (1871); *Ulagappan Ambalam* v. *Chidambram Chetty*, 29 M., 497; *Sankaralingam Chettiar* v. *Stephen Ralli*, S.A. No. 959 of 1901.

82. In the following cases Injunctions were granted :—*Jankee Singh* v. *Bukhooree Singh*, S.D.A. (1856), 761; *Baboo Inderdeonarain Singh* v. *Toolsee Narain Singh*, S.D.A. 1857, 765; *Guru Das Dhur* v. *Bijaya Gobinda Baral*, 1 B.L.R., A.C., 108 (1868); s.c., 10 W.R., 171; *Holloway* v. *Wahed Ali*, 12 B.L.R., 191 *note* (1871); *Rajendra Lall Goswami* v. *Shama Churn Lahiri*, 5 C., 188 (1879); *Shadi* v. *Anup Singh*, 12 A., 436 (1889); and in the following refused: 3 B.L.R., App. 67 (1869); *Sri Chand* v. *Nim Chand Sahu*, 5 B.L.R., App., 25 (1870); *Holloway* v. *Wahed Ali*, 12 B.L.R., 188 (1873); *Holloway* v. *Wahed Ali*, ib. 189 *note* (1871); *Massim Mollah* v. *Punjoo Gharamee*, 21 W.R., 373 (1874) [it must be shown no other remedy will be sufficient] : *Jugut Chunder Roy Chowdhury* v. *Eshan Chunder Banerjee*, 24 W.R., 80 (1875); *Nocury Lall Chuckerbutty* v. *Bindabun Chunder Chuckerbutty*, 8 C., 708 (1882); *Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee*, 14 C., 189 (1886); *Paras Ram* v. *Sherjit*, 9 A., 661 (1887).

83. *Paras Ram* v. *Sherjit*, 9 A., 663, 664 (1887).

84. *Joy Chunder Rukhit* v. *Bippro Churn Rukhit*, 14 C., 236 (1886); 24 W.R., 80 (1875).

85. *Paras Ram* v. *Sherjit*, 9 A., 661 (1887).

86. *Joy Chunder Rukhit* v. *Bippro Chander Rukhit*, 14 C., 236 (1886).

87. *Ib.*

CENTRAL LIBRARY

of a tank, the plaintiff did not allege that he had been excluded from the part of the land in which it had been excavated or that he desired to appropriate it to any other purpose, and that he had been prevented from doing so, and the land taken formed but a very small portion of the joint property, it was held that the plaintiff had not suffered any injury by what had been done, and his suit was dismissed. [88]

(d) Other injurious acts.—The ordinary cases of alleged injury are those caused by cultivation of, building upon, or excavation of the joint property. There may, however, be other acts entitling a sharer to relief against his co-sharers, such as waste by felling timber, destruction of the family dwelling-house or other family or joint property. [89] Whether, however, that relief will be by way of an Injunction will depend upon the further question whether the circumstances of the particular case admit of such a remedy upon the principles laid down in the Specific Relief Act and the decisions cited in the preceding pages.

It has, however, already been pointed out that mere user of land to the profit of a co-sharer without damage to others, such user involving neither an alteration in the condition of the land nor an exclusive possession, constitutes no infringement of the co-owner's rights. Therefore, where a ferry was established by a co-owner, and the other sharers were in no way excluded or otherwise damnified, they were held to have no cause of action in respect thereof. [90]

The foregoing rules may be thus summarized:—(*a*) The Courts will, in all cases, be cautious of interference with the possession and enjoyment of joint property (*b*) If one co-sharer uses the joint property to the greater profit of himself, but without damage to the co-sharer there is no cause of action. (*c*) Inasmuch as each co-sharer is entitled to a portion of every part of the joint property, the Courts will not as a general rule enforce merely strict rights and will not interpose where the user is slightly in excess of the right. (*d*) Where there is an infringement of a character which is sufficiently substantial to entitle to some relief, the Courts will, in the determination of the question whether an Injunction should be granted, consider whether the injury is adequately remediable by damages and partition. If that be the case, an Injunction will be refused. (*e*) In the particular case of alleged injury through cultivation in the ordinary course by a co-sharer in actual occupation and sole use of the property, damages and not an Injunction will ordinarily be granted, even though the cultivation has the effect of excluding a co-sharer, unless such exclusion is in denial of that co-sharer's title, in which case an Injunction will be granted; such a rule being necessitated by the climate, soil and other peculiar circumstances of this country in which lands are ordinarily cultivated in common. (*f*) In all other cases an Injunction may be granted where the act complained of involves the exclusion of the co-sharer, or some other material and substantial injury not remediable by partition or damages such as the material and injurious alteration of the nature and condition of the property to which the parties are jointly entitled.

---

88. *Mohima Chunder Ghose* v. *Madhub Chunder Nag*, 24 W.R., 80, 81 (1875).

89. *See* Act 47 of 1963, s. 38, Ill. (*n*).

90. *Lachmeswar Singh* v. *Manowar Hossein*, 19 C., 253 (1891); v. *ante*, where the facts of this case are given.

CENTRAL LIBRARY

78. Persons for whom injunctions against waste may be granted.— It was an old and well-established doctrine pertaining to the jurisdiction of Equity by Injunction against waste, that it was not exercised as against a stranger to the premises, without interest or title therein, or when no privity existed between the parties to the action, defendants being regarded in such cases as trespassers, and as such liable to an action of trespass at law. A mere stranger might be immediately dispossessed, and, if the facts did not show privity of title or irremediable injury, the Injunction, if already granted, was dissolved.[91] Under the modern jurisdiction, it is still necessary in actions for perpetual Injunctions against waste, and in which such Injunction is the material or a substantive portion of the relief sought, to allege and prove privity of title between the parties to the suit. For the essential character of the tort of waste is, that the party committing it is in rightful possession, and that there is privity of title between the parties. If there be no such privity, there is no waste technically so called. In *any* suit, however, if it be proved that any property in dispute in the suit is in danger of being wasted, the Court may grant a temporary Injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting of the property as the Court thinks fit.[92] It is possible, therefore, that such a temporary Injunction might be issued against a stranger to the title. But in such case the waste, though waste in fact, would not be waste in its technical sense, and the Injunction would be granted as ancillary merely to the other relief sought in the suit. The act of waste is restrained, not upon the ground that the privity of the plaintiff's title demands such restraint, but for the purpose of preserving the *status quo ante* until decree.

In the case of waste, properly so called, as a general rule he only who has the remainder or reversion of the inheritance is entitled to relief. Trustees may also sue to restrain and stay waste. So, if the legal estate is in trustees upon trust for a tenant for life, with remainders over, and the tenant for life commits waste, the trustees have a right to sue to restrain the waste, and it is their duty to do so, if parties unborn are interested.[93] As to co-parceners, joint tenants, and tenants-in-common, mortgagors and mortgagees, landlords, persons entitled upon the death of Hindu female heirs and others, see the pages undermentioned.

79. Account in case of waste.—It was a well-established principle of Equity jurisprudence that in all cases where a bill for an Injunction would lie to restrain waste, an account of, and satisfaction for, the waste already committed was allowed to prevent multiplicity of suits as well as to afford complete redress without compelling a resort to law. An account of the waste committed and a decree for damages might have been had in the Injunction suit. Such an account

---

91. High, *Inj.*, § 656; Snell's *Principles of Equity*, 28th ed. p. 655. *Mogg* v. *Mogg*, Dick, 670; *Wrixon* v. *Condran*, 1 Ir. Eq., 380; *Congleton* v. *Mitchell* 12 Ir. Eq., 45; *Mortimer* v. *Cottrell*, 2 Cox., 205, there cited.

92. Civ. Pr. Code, *O.* 39 as amended by Act 104 of 1976; *Kesho Prasad Singh* v. *Shrinibash Prasad Singh*, 38 C., 791 (1911).

93. Kerr, *Inj.*, (6th ed) p. 63, High, *Inj.*, §§ 686, 696; so also trustees to preserve contingent remainders may sue ; *ib.*,

CENTRAL LIBRARY

might have been decreed as between tenants-in-common. On the other hand, the general maxim was "no Injunction no account." [94] To this rule, which had as its ground the divided jurisdictions of the Courts, there were several exceptions, [95] which it is now unnecessary to state. For in this country a suit may be brought praying for several reliefs in combination or in the alternative. But every plaint must now state *specifically* the relief claimed either simply or in the alternative. [96] A party may sue both for an Injunction and an account, and may be awarded both remedies, or he may be refused an Injunction and given a decree for damages and an account.

---

94. *Parrot* v. *Palmer*, 3 My. & K., 632, *per* Lord Brougham.

95. *See* High, *Inj.*, §§ 669, 670; Kerr, *Inj.*, (6th ed.), pp. 83-85.

96. Civ. Pr. Code, *O.* 7, *r.* 7, taken from English, *O.* 20, *r.* 6. See Woodroffe & Ameer Ali's *Civil Procedure Code*, p. 687; Sarkar on *Civil Procedure*, (7th ed.), p. 420.

CENTRAL LIBRARY

CHAPTER X

INJUNCTIONS AGAINST NUISANCES

Synopsis

80. Nuisances generally.
81. Injunctions against nuisances.
82. Nuisances in respect of natural rights.
(i) Air.
(ii) Light.
(iii) Water.
(iv) Support.
83. Nuisances in respect of Easements.
(i) Air.
(ii) Injunctions against obstruction of air.
(iii) Light.
(iv) Injunctions against obstruction of light.
(v) Support; and Injunctions against withdrawal of support :
(vi) Water; and Injunctions in respect of rights to water.
(vii) Way; and Injunctions against obstruction (in respect of right) of way.
(viii) Privacy; and Injunctions to preserve privacy.
84. Mandatory Injunctions.

80. Nuisance generally.—A nuisance is a misuse or abuse of a man's own property or proprietary rights, or an unauthorized use of public property causing either damage to the public (in which case it is called a public nuisance) or merely damage to a private citizen (in which case it is called a private nuisance) and not necessarily depending for its wrongful character on malice or negligence and not amounting to trespass.[1] Trespass is the wrongful disturbance of another in his exclusive possession of property. Where the infringement of the right is the consequence of an act which is not in itself an invasion of property, the cause from which the injury flows is termed a nuisance. In the one case it is the immediate act which causes the injury, in the other the injury is the consequence of an act done beyond the bounds of the property affected by it.[2] The law with regard to nuisances mainly depends upon the maxim *sic utere tuo ut alienum non laedas* which prohibits acts which are an abuse of the legal rights enjoyed by a proprietor. The maxim cited applies only to cases where the act complained of violates some right, and an act legal in itself violating no right cannot be restrained by Injunction upon the ground of the wrong motive which induced it.[3] Torts arising out of nuisances may be either those in which the *damnum* consists of some bodily injury, such as that resulting from the keeping of unfenced exca-

---

1. Clerk and Lindsell on *Torts*, 15th ed. para 23-01. As to public nuisances, see *Soltau v. De Held*, 2 Sim, N. S. 142; Kerr, *Inj.*, (6th ed.), p. 131 *et seq.* see, Salmond and Hellston *on The Law of Torts* (18th ed.), pp. 48-49. Windfield and Jolowicz on *Tort*, 12th ed. 377-379.
2. Kerr, *Inj.*, *ib.*
3. Beach, *Inj.*, § 1076.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

vations near a highway, permitting premises adjoining a highway or land of another to fall into a ruinous condition, the creation of noxious fumes and the carrying on of noisome or noxious employment. The two latter forms of nuisance may also be conveniently dealt with under the next head, namely, torts in which the *damnum* consists of some injury to property or interference with the ordinary physical comfort of human existence in such property. So one who brings or collects water upon his land does so at his peril, for, if it escape and injure his neighbour, he is liable, however careful he may have been.[4] And on the same principle a man who has called into special existence an electric current for his own purposes and who discharges it into the earth beyond his control, is as responsible for damage which that current does to his neighbour as he would have been if, instead, he had discharged a stream of water.[5]

Under the last-mentioned class of torts are those which consist in injuries to servitudes, whether natural or conventional. Natural servitudes or natural rights are such as are necessary and natural adjuncts to the properties to which they are attached (such as the rights to air, light, support and water), and they apply universally. Conventional or acquired servitudes are not universal, but must always arise by custom, prescription, or express or implied grant. The right to the enjoyment of a conventional servitude is called an easement or a *profit a prendre* according as the right is merely a right of user or a right of acquisition. Of easements those in particular may be mentioned which relate to air, light, support, water and way. In a general sense every violation of an easement may be considered as a nuisance, although the converse of the proposition does not hold true.[6]

The commission of a nuisance gives rise to an action for damages, and in appropriate cases a nuisance threatened or committed will entitle the party suing to an Injunction. "What makes life less comfortable and causes sensible discomfort and annoyance is a proper subject of Injunction."[7] The circumstance that the thing complained of may be a public nuisance does not prevent an individual who has sustained special damage over and above that suffered by the rest of the public from bringing an action which is the proper remedy in respect of injuries done to his own personal comfort and enjoyment. The action is usually brought by the occupier or lessee in possession; but the owner may sue on the ground of injury to his property either alone or conjointly with the occupier. To sustain a suit by a reversioner it is necessary that the wrong complained of should operate injuriously to the reversion either by being of a permanent character or by operating as a denial of right.[8] The acts of several persons may together constitute a nuisance which the Court will restrain, though the damage

---

4. *Fletcher* v. *Rylands*, L.R. 3 H.L. 330. See also *Read* v. *Lyons*, (1946) 2 All E.R. 471.

5. *National Telephone Co.* v. *Baker*, (1893) L.R. 2 Ch. 186.

6. Clerk and Lindsell on *Torts*, 15th ed. para 23-80. High, *Inj.*, § 848.

7. *Fleming* v. *Hislop*, 11 App. Cas. 697, *per* Lord Halsbury, L.C.; *Reinhardt* v. *Mentasti*, 42 Ch. D. 688. Though in any particular case the question may arise whether damages are sufficient; *Bai Bhicaji* v. *Perojshaw Giranji*, 40 B. 401 (1915); 7 Bom. L.R. 1040.

8. Kerr, *Inj.*, 6th ed. p. 135; *Land Mortgage Bank* v. *Ahmedbhoy Habibbhoy*, 8 B. 62, 64 86, 90 (1883); High, *Inj.*, § 762; Spelling, *op. cit.*, § 383.

CENTRAL LIBRARY

occasioned by the acts of any one, if taken alone, would be inappreciable.[9] In the case of a public nuisance, the Advocate-General or two or more persons who have obtained his consent in writing may institute a suit, though no special damage has been caused, for a declaration and Injunction or other appropriate relief.[10] There is a disposition of Courts of Equity to abdicate in favour of Courts vested with Criminal jurisdiction the regulation as well as the punishment of acts which constitute distinctive public nuisances. And yet everywhere these Courts are still vested with jurisdiction to give relief to private parties in all proper cases against nuisances even of a public character.[11]

81. Injunctions against nuisances.—A very frequent ground of Injunction is nuisance. What makes life less comfortable and causes sensible discomfort and annoyance is a proper subject of Injunction.[12] An Injunction cannot, however, be granted to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance.[13] When the injury complained of is not, *per se*, a nuisance, but may or may not become so, according to circumstances, and where it is uncertain, indefinite or contingent, or productive of only possible injury, the Court will not interfere.[14] The Court will not ordinarily interfere until an actual nuisance has been committed. But it may interfere before then when it is satisfied that the act will inevitably result in a nuisance unless prevented.[15] Subject to this, the principles governing the issue of Injunctions in cases of nuisance are the same as those applicable to other torts. The object of the jurisdiction is the restraint of irreparable mischief and protection of property from irreparable or at least, from substantial or material damage pending the action.[16] The defendant will not be enjoined where the alleged nuisance is fairly attributable to natural causes.[17] The Court will not regard at all trifling nuisances. If damages are a full and adequate compensation for the injury, there is no case for an Injunction, the right to which may be further barred by the conduct of the applicant, his acquiescence or delay.[18] And

---

9. *Thorpe* v. *Brumfitt*, 8 Ch. 650; *Blair* v. *Deakin*, W. N. (1887), 148; *Lambton* v. *Mellish* (1894), 3 Ch. 163.

10. Civ. Pr. Code, s. 91, see Sarkar on *Civil Procedure*, 7th ed. p. 211.

11. Spelling, *op. cit.*, § 393. See Goyle's *Law of Injunction*, pp. 183-87.

12. *Per* Lord Halsbury in *Fleming* v. *Hislop*, 11 App. Cas. 697; *Reinhardt* v. *Mentasti*, 42 Ch. D. 688. Annoyance is, strictly speaking, a wider term than nuisance; *Wood* v. *Cooper*, L.R. 1894, 3 Ch. 67; *Tod Heatley* v. *Benham*, L.R. 40 Ch. D. 93. See generally as to Injunctions against nuisances, Kerr, *Inj.*, 6th ed. Ch. VI; Beach, *Inj.*, Ch. XXXVIII; Joyce, *Inj.*, 99; High, *Inj.*, Ch. XIII; Hilliard *Inj.*, Ch. IX; Joyce's *Doctrines*, 99; Spelling's *Extraordinary Relief*, Ch. VII and as to abatement of nuisance, *Hope* c. *Osborne*, 2 Ch. (1913), 349.

13. Act 47 of 1963, s. 41(f).

14. High, *Inj.*, § 742; see also Beach, *Inj.*, § 1069; Spelling, *op. cit.*, § 392, as to contingent and speculative nuisance.

15. *Amarendranath Dey* v. *Baranagore Jute Co.*, 49 C., 1059 (1922).

16. Joyce's *Doctrines*, 99; Spelling, *op. cit.*, § 377.

17. Beach, *Inj.*, § 1043.

18. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B., 53, 67, 70, 85 (1883). (See also as to acquiescence and delay, Kerr, *Inj.*, (6th ed.) pp. 155-157; High, *Inj.*, § 756; Beach, *Inj.*, § 1061 and, generally ; Joyce's *Inj.*, 99). A person may so encourage

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

it may be said, generally, that the aid of an Injunction will not be extended for the prevention of a nuisance, when it does not satisfactorily appear that the person aggrieved is without adequate remedy at law.[19] The fact that the act threatened might be punished criminally as a nuisance, will not prevent the exercise of the restraining power of Equity.[20] If, on the other hand, the injury is of so material a nature that it cannot be well or fully compensated by damages or is such as from its continuance and permanent mischief, might occasion a constantly recurring grievance, a foundation is laid for the interference of the Court by way of Injunction.[21] A mandatory Injunction is ordinarily the proper remedy in cases of continuing actionable nuisances.[22] Relief by Injunction is sometimes granted where damages for the commission of the nuisance would be difficult of adjustment pecuniarily, thus rendering the remedy at law ineffectual.[23] Though the Court will not interfere, if the damage is slight or accidental and occasional only, and the nuisance is merely of a temporary or occasional character, yet the damage, though in itself slight, may, from its continuance or from delay in removing it, or from constant repetition, become sufficiently substantial for the interference of the Court.[24]

The interference of the Court, in cases of prospective injury, very much depends upon the nature and extent of the apprehended mischief and upon the certainty or uncertainty of its arising or continuing ; and the fact of the nuisance having commenced, raises a presumption of its continuance. Changes and improvements made at the eleventh hour, and the efficacy of which depends greatly on the good intention and constant personal care of the defendant and his servants, ought not to influence the question of Injunction when once the nuisance is distinctly proved to have existed.[25] In determining whether the injury is serious or not, regard must be had to all the circumstances which may flow from it.[26]

In a case a houseowner of abounding land of a cricket ground suffered damages due to playing cricket by a Cricket Club. The club offered to supply and fit a safety net over the plaintiff's garden when cricket was in progress to

---

another in the erection of a nuisance as not only to be disentitled to an Injunction, but also to relieve the adverse party from liability for damages at law; *Williams* v. *Earl of Jersey*, 1 Cr. and Ph., 91.

19. High, *Inj.*, §§ 745, 750, and Act 1 of 1877, s. 56 cl. (*i*).

20. *Ib.*; *People* v. *S. Louis*, 5 Gilm. 351 (Amer.); *Attorney-General* v. *Hunter*, 1 Dev. Eq., 12 (Amer.); Joyce's *Inj.*, 130.

21. *Ib;* Kerr, *Inj.*, 6th ed. p. 131 *et seq.* "The loss of health and sleep, the enjoyment of quiet and repose and the comforts of home cannot be restored or compensated in money;" *per* Thompson, J., *Dennis* v. *Eckardt*, cited in Hilliard, *Inj.*, 325.

22. *Lakshmi Narain Banerjee* v. *Tara Prosunno Banerjee*, 8 C. W. N., 710 (1904), and *see ib.*, as to the right of abatement of nuisance.

23. High, *Inj.*, § 791; Act I of 1877, s. 54, cl. (*b*).

24. Kerr, *Inj.*, 6th ed. p. 137 *et* seq.

25. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy*, 8 B. 66(1883).

26. *Goldsmid* v. *Tunbridge Wells Commissioners*, 1 Ch. 349; *Atty.-Genl.* v. *Mayor, etc. of Basingstoke*, 45 L.J. Ch. 729; *Catvasha* v. *Prafulla*, A.I.R. 1941 Nag. 364 (Act complained of is to be judged by the ordinary standard of persons residing in the neighbourhood and the criterian will be the ordinary physical comfort of human existence. *Thakur Dass* v. *Bhawanji*, A.I.R. 1957 Sind. 8.

CENTRAL LIBRARY

remedy any damage and to pay any expenses, and to fit unbreakable glass in the windows and provide shutters and safeguards for them. The plaintiffs rejected all those offers. Instead they brought an action against the club claiming damages for negligence and nuisance and an injunction to restrain the club from playing cricket on the ground without first taking adequate steps to prevent balls being struck out of the ground on to the plaintiff's property. The club denied that its use of the cricket ground involved an unreasonable interference with the plaintiff's enjoyment of their own property and contended that it had taken, or offered to take all reasonable steps to protect the plaintiffs and their properties from harm. It was held that the club's activities on the cricket ground amounted to an actionable nuisance and it was no defence that the plaintiffs had been the authors of their own misfortune by buying a house so close to the club's ground and they would inevitably be affected by the cricket. It was further held that it was not an appropriate case for the grant of an injunction since the court had to weigh the interests of the public at large against those of the individual and on balance the interest of the inhabitants of the village as a whole for preserving the cricket ground for their recreation and enjoyment should prevail over the private interest of the plaintiffs, who must have realised when they bought their house that balls would sometimes hit on to their property from the adjoining cricket ground. It followed that the appeal would be allowed and the injunction set aside [*Miller* v. *Jackson*, (1977)3 All E.R. 338 (C.A.)].

In another case the plaintiff owned land near the lake on which a club had organised motor boat races and water skiing for a long time. Although aware of the club's racing activities the plaintiff began building a house on her land. In about 10 years after the plaintiff considered at that time that the club's activities would not interfere with her comfort and enjoyment of the new house. However by the time the house was completed, the club was holding considerably more race meetings and the competing boats and had become more powerful and noisy. Gradually the club had become a centre of motor boat racing at national and international level and in number of days racing and practising took place on the lake. The plaintiff brought proceedings against the club seeking an injunction restraining the club from causing or permitting excessive noise to come on to her land and restricting motor boat racing on lake to certain specified times. Held although the plaintiff was not entitled to an injunction restraining all of the club's activities and notwithstanding than an injunction in general terms would be unworkable, the plaintiff was entitled to an injunction restraining the club from carrying on those activities which caused a nuisance to her in the enjoyment and use of her land, despite the public interest in such activities. Accordingly an injunction would be granted restraining the club's racing activities in each year and restricting the noise level of boats using the lake at other times [*Kennaway* v. *Thimpson*, (1980)3 All E.R. 329 (C.A.)].

A nuisance cannot be justified by the existence of other nuisances of a similar character, if it can be shown that the inconvenience is increased by the nuisance complained of; and the fact that a stream is fouled by others is not a defence to a suit to restrain the fouling by one. [27]

---

27. *Crossley* v. *Lightowler*, L.R. Ch. 478; Joyce's *Inj.*, 127; See, *Radhey Shiam* v. *Gur Prasad Sarma*, A.I.R. 1978 All. 86 (If there is substantial addition to the existing noise by introduction of some machine or instrument of performance that materially affects physical discomforts of the occupants of the plaintiff's house, injunction is to be granted).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

The Court will not, in general, interfere, until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts, which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. The probability that the act complained of is only something which may according to circumstances, or may at some considerable distance of time, prove a nuisance is not sufficient. To induce the Court to interfere there must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended danger will, if it comes, be irreparable.[28] And in such a case an Injunction can be obtained by a complainant out of possession.[29] Any one seeking an Injunction to restrain an alleged future nuisance, whether public or private, must show a strong case of probability that the apprehended mischief will in fact arise.[30] The fear of mischief though reasonable will not create a nuisance.[31]

Where in a suit to restrain a nuisance from noise and smell it was conceded on the part of the plaintiff that there was no longer any noise to complain of, the Court observed that in many cases it would be right and the imperative duty of the Court to grant an Injunction to restrain the repetition of wrongful acts, even though those wrongful acts had already ceased.[32]

If the right is clear or fairly made out it is the duty of the Court to protect the property by Injunction until the hearing. If the right or the fact of its violation is doubtful, the case resolves itself into a question of comparative injury, whether the defendant will be more damnified by the Injunction being granted, or the plaintiff by its being withheld. Terms may be imposed on the plaintiff or the defendant as the condition of granting or withholding the Injunction respectively. After the establishment of the right and the facts of its violation, the plaintiff is entitled to a perpetual Injunction to prevent the recurrence of the wrong, unless there be something special in the circumstances of the case.[33]

The words of an Injunction against causing a nuisance ought not to be so drawn as to shut out all scientific attempts to attain the desired end without

---

28. Kerr, Inj., 6th ed. p. 138 *et seq.*

29. *Kesho Prasad Singh* v. *Shrinibash Prasad Singh*, 38 C. 791, (1911).

30. *Attorney-General* v. *Corporation of Manchester*, L.R. 1893, 2 Ch. 87, in which case the principles upon which the Court proceeds in granting or refusing Injunctions in *quia timet* actions, and the result of the authorities on this, and on nuisance at common law, were stated and discussed. See as to this case Beach, *Inj.*, § 1068. As to whether the Court has jurisdiction to award damages for an injury threatened only, see *Martin* v. *Price*, L.R. 1894, 1 Ch. 284. In cases governed by the Easements Act the Court has not such power. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, 481; (1894). Mitchell's *Law of Easements*, 242, 243. In a case not governed by this Act the Court awarded damages in lieu of an Injunction for future damage. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 252 (1887). See also *Holland* v. *Worley*, L.R. 26 Ch. D. 578.

31. Joyce's *Inj.*, 99; Spelling, *op. cit.*, § 391.

32. *Rapier* v. *London Tramways Company*, L.R. 1893, 2 Ch. 591, 592; See, *Dhannalal* v. *Chittar Singh*, A.I.R. 1959 M.P. 240 see also, *Karunanidhi* v. *Ranganathan*, A.I.R. 1973 Mad. 443.

33. Kerr, *Inj.*, 154 *et seq;* Spelling, *op. cit.*, § 417; v. *ante*, § 38 as to Injunction upon terms; as to the burden of proof, v. *ante*.

CENTRAL LIBRARY

causing a nuisance.[34] Damages may be combined with a limited Injunction, when the circumstances of the case justify this particular form of relief.[35] In the same suit an Injunction may be obtainable as well as damages for the loss already incurred from the disturbance.[36] When a plaintiff has proved his right to an Injunction against a nuisance or other injury, it is no part of the duty of the Court to inquire in what way the defendant can best remove it; the plaintiff is entitled to an Injunction at once, and it is the duty of the defendant to find his own way out of the difficulty, whatever inconvenience or expense it may put him to.[37]

In one case an action was brought to restrain the defendants from using a house in a good class residential street in London for the purpose of prostitution and an interlocutory injunction restraining the defendats was obtained "until after judgement in the action or until further order whether themselves or by their servants or agents or any of them or otherwise howsoever from using or causing or permitting to be used the house for the purposes of prostitution". The plaintiff was held to have shown sufficient *prima facie* case for an interlocutory injunction in that the activities of the defendants constituted a sensible interference with the comfortable and convenient enjoyment of the plaintiffs' residence, having regard to the usages of civiled society and to the character of the neighbourhood [*Thompson-Schwab* v. *Costaki,* (1956)1 All E.R. 652 (CA)].

In a recent case in England at a busy intersection of roads in London a a 'sex centre and cinema club' was opened in a shop. The locality was an area which included residential accommodation, restaurants, snack bars, food stores and others. There were a major railway terminal and a bus garage in the vicinity. In the Motion for an interlocutory injunction pending trial it was held that the fact cannot be disregarded that however discretly conducted the business will in fact be the sale of hard pornography and will be a business deeply repugnant to the reasonable sensibilities of most ordinary men and women. If customers are to use the shop it must be because of the nature of the materials sold will be evident from the name of the shop coupled with its external appearance. There must be a danger that in such a small residential area, which is, as they were perched insecurely on the edge of the environs of the Victoria Station. The continued existence of this business will erode the quality of the immediate neighbourhood during the period now and the trial. It was held that the plaintiff is entitled to interim relief by way of injunction restraining the defendant to discontinue the trade and shop sign and other forms of advertisement till the trial. Interim injunction was granted in terms sought by the plaintiffs [*Laws and Ors.* v. *Florinplace Ltd.,* (1981)1 All E.R. 659].

---

34. *Fleming* v. *Hislop,* L.R. 11 App. Cas. 686, and of course the decree must not be broader in its terms than the bill or complaint. Beach, *Inj.,* § 1073; the Injunction may be limited to a particular period, *Semper* v. *Foley,* 2 John & Hem. 555, 564.

35. *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibbhoy,* 8 B. at pp. 77, 91 (1893).

36. *Jamnadas Shankarlal* v. *Atmaraj Harjivan,* 2 B. 133 (1877).

37. Joyce's *Doctrines; Atty.-Genl.* v. *Colney Hatch Lunatic Asylum,* L.R. 4 Ch. 146. See, *Gotham Construction Co.* v. *Amulya Krishna,* A.I.R. 1968 Cal. 91 (Even in absence of efficacious relief under a statute or adequacy of compensation, suit for injunction lies for nuisance by noise).

CENTRAL LIBRARY

In the case of nuisance by incorporated Companies having compulsory powers to take lands and construct works, it has been held that they are bound to act in strict accordance with their powers. If they either act in excess of such powers and cause damage, or if, though keeping within their powers, they construct their works in so unskilful or negligent a manner as to cause unnecessary injury to private rights, the parties aggrieved thereby may sue for damages, and, when such is the appropriate remedy, obtain an Injunction. If, however, the Company keeps within its powers, no action is maintainable against them for any act done in the exercise of their authority, however injurious, provided the injury done is the necessary and inevitable result of the exercise of the Statutory powers and provided that the works have been executed with proper skill and care and in such a way as to cause no unnecessary injury to private rights. Where injury to private rights results from the construction of works which have been authorized and which have been executed with proper skill and care, the party injured must look for his remedy to the proviso for compensation, if any, within the Statute authorizing the works, and, if there be no such proviso, he is without remedy. If an Act necessarily requires something to be done which cannot be done without creating a nuisance, or if, as to those things which may or may not be done under it, there is evidence on the face of the Act that the legislature supposed it impossible to be done somewhere and under some circumstances without creating a nuisance, an action will not lie.[38] Where however, the terms of the Statute are not imperative, but only permissive, and it is left to the discretion of the persons empowered to determine whether the general powers committed to them shall be put in execution or not, the fair inference is that the Legislature intended that discretion to be exercised in strict conformity with private rights, and did not intend to confer a license to commit nuisance in any place which might be selected for the purpose.[39]

Where there is an express restrictive covenant against nuisance, annoyance, grievance and the like, the question is one not of nuisance, but upon the covenants, and the grant of an Injunction will be determined upon the principles regulating the issue of Injunctions in cases of breach of covenant and contract.[40]

The doctrine of coming to a nuisance may be looked upon as exploded. A man is not precluded from maintaining an action by the fact that the business which creates the nuisance had been carried on before he took possession, and therefore the fact, that a man has come to a nuisance, does not disentitle him to relief by Injunction.[41]

---

38. See for an example of this, *National Telephone Co.* v. *Baker*, 1893, L.R. 2 Ch. 186, 203. "The defendants are expressly authorized to use electrical power and the legislature must be taken to have contemplated it and to have condoned by anticipation any mischief arising from the reasonable use of such power:" *per* Kekewich, J.

39. Kerr, *Inj.*, 6th ed. p. 145 *et seq.*, *et ibi casas*. See also *Harrison* v. *Southwark and Vauxhall Water Company*, L.R. 1891, 2 Ch. 409 (explaining and distinguishing *Fenwick* v. *East London Railway Company*, cited in Kerr, *Inj.* 6th ed.; *Rapier* v. *London Tramways Company*, L.R. 1893, 2 Ch. 588; *National Telephone Company* v. *Baker*, L.R. 1893, 2 Ch. 186.

40. *Tod Heatley* v. *Benham*, L.R. 40 Ch. D. 80.

41. *Tipping* v. *St. Helens Smelting Co.*, 1 Ch. 66.

CENTRAL LIBRARY

In the case cited,[42] which was one of nuisance by vibration and noise, Smith, L.J., said in his judgment[43]—"Many Judges have stated, and I emphatically agree with them, that a person by committing a wrongful act (whether it be a public Company for public purposes, or a private individual) is not thereby entitled to ask the Court to sanction his doing so by purchasing his neighbour's rights, by assessing damages in that behalf, leaving his neighbour with the nuisance, or his lights dimmed, as the case may be. In such cases the well-known rule is, not to accede to the application, but to grant the Injunction sought, for the plaintiff's legal right has been invaded and he is *prima facie* entitled to an Injunction. There are however, cases in which this rule may be relaxed and in which damages may be awarded in substitution for the Injunction as authorized by this section (s. 2 Lord Cairn's Act). In any instance in which a case for an Injunction has been made out, if the plaintiff by his acts or laches has disentitled himself to an Injunction, the Court may award damages in its place. So, again, whether the case be for a mandatory Injunction, or to restrain a continuing nuisance, the appropriate remedy may be damages in lieu of an Injunction, assuming a case for an Injunction to be made out. In my opinion it may be stated as a good working rule that—

(*a*) if the injury to the plaintiff's legal rights is small;

(*b*) and is one which is capable of being estimated in money;

(*c*) and is one which can be adequately compensated by a small money payment;

(*d*) and the case is one in which it would be oppressive to the defendant to grant an Injunction;

then damages in substitution for an Injunction may be given.

There may also be cases in which, though the four abovementioned requirements exist, the defendant, by his conduct, as for instance hurrying up his buildings so as, if possible, to avoid an Injunction, or otherwise acting with a reckless disregard to the plaintiff's rights, has disentitled himself from asking that damages may be assessed in substitution for an Injunction.

It is impossible to lay down any rule as to what, under the differing circumstances of each case, constitutes either a small injury, or one that can be estimated in money, or what is a small money payment, or an adequate compensation, or what would be oppressive to the defendant. This must be left to the good sense of the tribunal which deals with each case as it comes up for adjudication."

---

42. *Shelfer* v. *City of London Electric Lighting Co.*, L.R. 1895, 1 Ch. 287.

43. *Ib.* at pp. 322, 323; See, *Attorney-General* v. *P. Y. A. Quarries Ltd.* [1957]1 All E.R. 894. In an action brought by the Attorney-General on the relation of the local authority, an injunction was granted restraining the defendants, the quarry owners, "from carrying on the business of quarrying ..... in such a manner as ..... to occasion a nuisance to the residents of the neighbourhood by dust or vibration". It was held that although public nuisance from vibration should be approached on a footing different from that of public nuisance from noise or smell, since discomfort from vibration was largely a matter of individual susceptibility and accordingly the fact that one person suffered discomfort from vibration did not necessarily establish that his neighbour was similarly affected, yet on the evidence of a nuisance from vibration causing person discomfort existed when the writ was issued and was sufficiently widespread to amount to a public nuisance.

CENTRAL LIBRARY

Where an application for injunction cannot be heard by the court through no fault of the plaintiff or defendant, and the judge comes to the conclusion on a *prima facie* view that irreparable damage may be done to the plaintiff by not preventing the continuance of the alleged nuisance or whatever other wrong doing. It was held that the court had jurisdiction to grant an *ex parte* injunction [*Beese* v. *Woodhouse*, (1970)1 All E.R. 769 (C.A.)].

As every owner of land is under an obligation not to allow the branches of his trees to grow so as to overhang, or the roots of his trees to extend so as to penetrate, his neighbour's land to the detriment of the latter, in case of breach of such an obligation, it is open to the Court to grant a mandatory Injunction, for the removal of the nuisance. [44]

82. Nuisances in respect of natural rights.—Natural rights are those rights which are treated by law as the ordinary incidents of property and annexed to land wherever it exists. They are part of the complete rights of ownership, whereas easements are acquired rights abstracted from the ownership of one—and added to the ownership of another. An infringement of those rights constitutes a nuisance.

(i) Air.—Every one has a right *in rem* to be secured from annoyance, whether from smells, noises or other sources of discomfort. It is the right of every owner of land to have the use of the air in its natural state free from such annoyances, and that the air passing to such land shall not be unreasonably polluted by other persons. [45] This, of course, does not mean that a person is entitled to absolute purity of air, for such a right would be incompatible with the exercise by others of ordinary and necessary acts and pursuits of life. The law does not regard trifling nuisances. In this connection unpolluted air means air of such a degree of purity that it is not rendered incompatible with the physical comfort of human existence. [46] The right is not violated unless the annoyance is such as materially to interfere with the ordinary comfort of human existence. [47] Every owner has also the right to so much light and air as pass vertically thereto. [48] There is, however, no natural right to light or air coming laterally. Such a right can only be acquired as an easement. [49]

---

44. *Lakshmi Narain* v. *Tara Prossanna*, 31 C. 944 (1904).

45. Act V of 1882 (Easements), s. 7, ills. (*b*), (*c*). *Aldred's Case*, 9 Coke 58; Clerk and Lindsell *on Torts* 15th ed. paras 23-03 and 23-11; *Bagram* v. *Khettranath Karformah*, 3 B.L.R., O.C.J. 43 (1869). See High, *Inj.*, § 772, *et seq.*; Beach, *Inj.*, § 1096. *Wood* v. *Conway Corporation*, 2 Ch. (1914), 47 (noxious fumes).

46. *Land Mortgage Bank of India* v. *Ahmedbhoy Habibhoy*, 8 B. 54 (1883); *St. Helens Smelting Co.* v. *Tipping*, 11 H.L.C., 642; *Walter* v. *Selfe*, 4 DeG. & Sm. 315.

47. *Crump* v. *Lambert*, L.R. 3 Eq. 413. See *Bamford* v. *Turnley*, 3 B. & S. 83; Katiayar's *Easements, and Licences*, 10th ed. pp. 746-747; Halsbury's *Laws of England*, 4th ed. Vol. 14 para 33 also Gale *on Easement*, 15th ed. 387. As to what is actionable disturbance of an Easement, *see* s. 33, Easements Act and *Bai Kashibai* v. *Purshottam Keshavji*, 25 Bom. L.R. 239 (1923); and as to proof of obstruction, *Sridhar* v. *Gujabai*, 27 Bom. L.R. 198 (1924).

48. Act V of 1882, s. 7, ill. (*d*).

49. *Chastey* v. *Ackland*, 1895, 2 Ch. 289, 402; *Sarubhai* v. *Bapu Narhar Sohoni*, 2 B. 660 (1878). See also Halsbury's *Law of England*, 4th ed. Vol 14 paras 237, 238.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

As instances of the infringement of the right now considered the following may be cited :—*A* rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier *B*. The latter may sue for an Injunction restraining *A* from making the noise.[50] Relief also may be claimed against vibration.[51] Again, if *A* pollutes the air with smoke so as to interfere materially with the physical comfort of *B* and *C* who carry on business in a neighbouring house, the latter may sue for an Injunction to restrain the pollution.[52] Injunctions may also be granted to restrain nuisances from smell;[53] burning of refuse;[54] radiation of heat;[55] the carrying on of noisy and offensive trades and the like.

There must, however, be not merely a nominal but a sensible and real damage before the Court will interfere. Whether or not the injury is substantial enough to induce the Court to exercise its protective jurisdiction is a question which must depend upon the particular circumstances of the case. It is impossible to find any precise standard by which to determine the question. Each case must depend on evidence as to the amount and nature of the nuisance. Though the right to corrupt and pollute the air may be acquired as against an individual, no length of time will legalise a public nuisance or enable a party to prescribe for its continuance.[56] In the undermentioned case plaintiff's beams overhung defendant's soil and defendant erected a building which overhung those beams. A question having arisen as to whether the beams gave the plaintiff a right to the column of air above them, held *cujus est solum ejus est usque ad cœlum* and the diminution in the defendant's rights by reason of the beams did not extend beyond the protrusion of the beams themselves.[57]

(ii) Light.—Every one has a natural right *in rem* to secure *vertically* the light appertaining to the situation of his tenement. He has no natural right to the light laterally appertaining to it, except by grant or prescription.[58]

(iii) Water.—A person by or through whose premises water flows from other person's premises has certain natural rights therein. The rights are, in all

---

50. See *Lambton* v. *Mellish*, 1894, 3 Ch. 163 (Injunctions against noise caused by organs); *Broder* v. *Saillard*, 2 Ch. D. 692; *Ball* v. *Ray*, L.R. 8 Ch. App. 467 (noise caused by horses in adjoining stable); *Christie* v. *Davey*, L.R. 1893, 1 Ch. 316 (noise made maliciously).

51. *Scott* v. *Firth*, 4 F. and F. 349; *Grosvenor Hotel Company* v. *Hamilton*, L.R. 1894 Q.B.D., 836; *Heather* v. *Pardon*, 37 L.T.N.S., 393; See also Katiyar's *Easements and Licences*, 10th ed. pp. 187-188.

52. See *The Land Mortgage Bank of India* v. *Ahmedbhoy Habibhoy*, 8 B. 35 (1883) [suit for injunction to restrain a nuisance caused by the working of the defendant's cotton mill, creating dust and cotton fluff, and for damages].

53. *Rapier* v. *London Tramways Co.*, L.R. 1893, 2 Ch. 588.

54. *Fleming* v. *Hislop*, 11 App. Cas. 686.

55. *Reinhardt* v. *Mentasti*, L.R. 42 Ch. D. 685; *Robinson* v. *Kilvert*, L.R. 41 Ch. D. 88. See Clerk and Lindsell *on Torts*, 15th ed. para 23-03.

56. Kerr, *Inj.*, 6th ed. 184.

57. *Ranchod* v. *Abdula Bhai*, 28 B. 428 (1904).

58. Act V of 1882, s. 7, ill. (*d*): *Bagram* v. *Khettranath Karformah*, 3 B.L.R. O.C.J., 43 (1869); Clerk and Lindsell *on Torts*, 15th ed. paras 23-61 to 23-65; Halsbury's *Laws of England*, 4th ed. Vol. 14 paras 210 and 220.

CENTRAL LIBRARY

streams, to have the water reach him undeteriorated in quality.[59] It is the right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over, or through his land shall not before so passing or percolating be unreasonably polluted by other persons.[60] And in natural streams having a defined course,[61] and flowing on or below the surface in such defined course, there is a right to have an unobstructed flow from above and below, to have the stream not unreasonably diminished in quantity, and to enjoy a reasonable use of the water of the stream.[62]

These rights are limited to natural streams, that is, streams flowing at their sources by the operation of nature and in a natural channel. Rights in artificial streams are not natural rights but easements.[63] The right to affect the quality, the quantity, or the flow of water, in a manner not justified by natural right, is an easement, and is therefore subject to the general law of easements. Injunctions will be granted to protect the legal right to the proper flow of water in a natural stream, as also against the fouling and pollution of water.[64] Other nuisances connected with rights in water may be here mentioned, namely, nuisance to the public right of navigation, nuisance to fishery and the like.[65] So long as water is allowed to flow in substantially the same way as before, there is no disturbance of natural right giving rise to a cause of action, but user which amounts to complete diversion of the stream is unreasonable and may be restrained by Injunction.[66] Each recurring act of disturbance creates a fresh cause of action,[67] and the burden of proof is on the person claiming invasion of natural rights.[68]

(iv) Support.—Every owner of land has a right that such land in its natural condition shall have the support naturally rendered by the subjacent and adjacent soil of another person.[69] The land is in its natural condition when it

---

59. Beach, *Inj.*, § 1111, *et seq.* Halsbury's *Laws of England*, 4th ed. vol. 14 para 190.

60. Act V of 1882, s. 7, ill. (*f*).

61. As to water not flowing in a defined channel, see *Bunsee Sahoo* v. *Kali Pershad*, 13 W.R. 414 (1870); *Robinson* v. *Ayya Krishnama Charyar*, 7 Mad. H.C.R. 46 (1872); *Hari Mohun Thakur* v. *Kissen Sundari*, 11 C. 52 (1884).

62. Clerk and Lindsell *on Torts*, 15th ed. paras 23-48 to 23-55; Act V of 1882, s. 7, ills. (*g*) (*h*) (*i*) (*j*); *Athur Ali Khan* v. *Sekundur Ali Khan*, 4 W.R. 28; *Court of Wards* v. *Rajah Leelanund Singh*, 13 W.R. 48 (1870); *Baboo Chumroo Singh* v. *Mullick Khyrub Ahmed*, 18 W.R. 525 (1873).

63. *Morgan* v. *Kibry*, 2M. 46 (1878) *Rameshar Pershad Narain Singh* v. *Koonj Behari Pattuk*, 4 C. 633 (1878).

64. Kerr, *Inj.*, 6th ed. 222, *et seq.*

65. See High, *Inj.*, §§ 794-815; Kerr, *Inj.*, 6th ed. 243, 247; and the *Law of Riparian Rights* by Lal Mohun Dass (Tagore Law Lectures, 1889).

66. *Directors of Swindon Waterworks Co., Ld.* v. *Proprietors of the Wilts and Berks Canal Navigation Co.*, L.R. 7 E. & I. App. 697.

67. *Court of Wards* v. *Rajah Leelanund Singh*, 13 W.R. 48 (1870).

68. *Hari Mohun Thakur* v. *Kissen Sundari*, 11 C. 52 (1884); *Onraet* v. *Kishen Soondaree Dassee*, 15 W.R. 83 (1871); *Bickett* v. *Morris*, L.R. 1 H.L. Sc. 47; *Obhoy Churn Dey* v. *Lukhy Monee Bewa*, 2 C.L.R. 55 (1878).

69. Act V of 1882, s. 7, ill. (*e*).

CENTRAL LIBRARY

is unburdened by buildings, or other weighty objects which may be built or set upon it. The natural right to support, though it cannot be increased by the erection of buildings or by otherwise increasing the weight and pressure of the land upon the subjacent or adjacent ground, (a right to any such increment of support being acquirable only as an easement), on the other hand is not lost or diminished by any such addition of weight or pressure. By virtue of the natural right a person is not inherently entitled to more support than is necessary to prevent the soil, if unburdened with buildings, from falling in.[70] The right of support is one existing by reason of vicinage, and is very varied, as the right of support of land by and, of buildings by land, or of buildings by buildings. Its consideration may be divided into the lateral support of land by adjacent land, the vertical support of the surface by the subsoil (where the property in the two is distinct), the support of buildings vertically, by subjacent soil, the support of buildings laterally by adjacent soil, and the support of buildings in juxtaposition. In some of these instances the right is a natural right; in others it is an acquired right, that is, an easement. It would be beyond the scope of this work to enter upon a consideration of all these instances of the right of support, or to discuss the various incidents of such right. In all cases, however, an Injunction (either temporary or perpetual) may be an appropriate or necessary relief. The right of support is pre-eminently one for the protection of which an Injunction may be an essential relief; and this either before or after there has been a decision upon the existence of such a right in any particular case. It is obvious that the invasion of such a right, when it exists, may work irreparable mischief, and that prior to any decision upon it, far less inconvenience or probable damage will generally arise from granting than from refusing a temporary Injunction. A reasonable probability of damage is a sufficient ground for an Injunction.[71] So (the right to lateral support being an incident to the ownership of land; and its infringement a nuisance), the removal and excavation of earth upon adjacent premises in such manner as to endanger the stability of the complainant's soil and fences, by removing their lateral support, will be enjoined.[72] The following instance of the grant of an Injunction given by the Specific Relief Act may also be here cited, though it is really an illustration of trespass: *A* and *B* are in possession of contiguous lands and of the mines underneath them; *A* works his mine so as to extend under *B's* mine and threatens to remove certain pillars which help to support *B's* mine. The latter may sue for an Injunction to restrain him from so doing.[73]

83. Nuisances in respect of easements.—A right of easement is as much the property of a person as the house in respect of which it is enjoyed;[74]

---

70. Kerr, *Inj.*, 6th ed. *et seq.*; Katiyar's *Easements and Licences* 10th ed. pp. 133 to 141; Clerk and Lindsell *on Torts*, 15th ed. paras 23-56 to 23-59; Halsbury's *Laws of England* 4th ed. vol. 14 paras 168-174 also Gale *on Easement*, 15th ed. pp. 312-313.

71. Sarkar's *Specific Relief Act*, 13th ed. pp. 437-438.

72. High, *Inj.*, § 753; as to the date when the cause of action arises, see *Jawatri* v. *H. A. Emile*, 13 A. 68 (1890).

73. A stronger case is required where the damage is merely threatened than where some damage has actually occurred: *Corporation of Birmingham* v. *Allen*, 6 Ch. D. 287, 288.

74. *Pranjivandas Harjivandas* v. *Majarim Semaldas*, 1 Bom. H.C.R. 156 (1863),

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

and the infringement of that if material [75] right, entitles the person injured to compensation in damages, and in appropriate cases, to an Injunction. The Law of Easements originally applied to the territories respectively administered by the Governors of Bombay and Madras, the Lieutenant Governor of the North West Provinces and the Chief Commissioners of the Central Provinces, Oudh & Coorg, as contained in the Indian Easement Act which is in the main and with some exception and codification of the English Law on the subjects of easements and profits a prendri appurtenant. The Act was extended on Punjab, Hariyana, Delhi, Orissa and Rajasthan by various statutory enactments from time to time. [76] In the Indian Limitation Act; [77] the remaining portion of the law relating to easements is mainly the same as the English law relating thereto.

Whereas natural rights are rights inherent in the possession of land belonging to every owner as a matter of course, easements are either created at the will of a landowner affected by them for the benefit of a neighbour or otherwise acquired by one person as against other person who is a landholder. In Engiish law an easement is a privilege without profit, and therefore the right known as a *profit a prendre* is not an easement. In this country, however, the latter word has a more extensive meaning, since, in those portions of India governed by the Easements Act it includes *profit a prendre* appurtenant, that is, annexed to the ownership of immovable property, known prior to Act XV of of 1877 as "an interest in immovable property appurtenant to land:" [78] and in the portions not so governed it includes a *profit a prendre* in gross, that is, one not appurtenant to property and which can be enjoyed by a person not in the possession, enjoyment, or occupation of any dominant tenement. [79] Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights. [80] Easements may be acquired by express or implied grant, by presumed grant or operation of law (such as easements of necessity and *quasi*-easements), by custom and prescription. [81]

It would be beyond the scope of this work, which deals with a form of procedure only, to treat of the substantive law relating to easements. It may, however, be shortly stated that whatever be the nature of an easement and whatever be the mode in which it has been acquired, an Injunction is an available and common remedy in appropriate cases for its infringement. [82] The general

---

75. *Gajadhar* v. *Kishori Lal*, 13 A. L.J. 385 (1915).

76. *See* Acts V of 1882 & VIII of 1891; Delhi Laws Act, 1915; Bombay Act of 1950; M.P. Act 12 of 1950; Madras Act 12 of 1957; H.P.A.L.O. 1948; Indian Easement Extension Act, 1961 (Act 5 of 1962); Union Territory of Pondichery Act 26 of 1968; Indian Easements Punjab Extension Act, 1961; Orissa Act 24 of 1967.

77. Act No XXXVI of 1963 ss. 25, 26.

78. Act V of 1882, s. 4.

79. *Chundee Churn Roy* v. *Shib Chunder Mundul*, 5 C. 945 (1880).

80. *See* Act V of 1882, s. 24, in *Hayagueva* v. *Sami*, 15 M. 286 (1891).

81. As to the last and common mode of acquisition, see Act V of 1882, s. 15; Act XXXVI of 1963, ss. 25, 26.

82. As to easements of necessity and *quasi*-easements, see Act V of 1882, s. 13. The law as to easements of necessity is the same in those parts of India where the Easements Act is not in force. *Charu Surnokar* v. *Dokouri Chunder Thacoor*, 8 C. 956, 958 (1882); cls. (*b*), (*d*) & (*f*), deal with *quasi*-easements. In cl. (*d*) there is a departure from English law,

CENTRAL LIBRARY

principles on which the jurisdiction of Equity to restrain the violation of easements is based are similar to those which constitute the foundation of the relief against nuisances. Indeed, so closely allied are the two subjects that it is difficult to draw the line between what constitutes a violation of an easement and what a nuisance. In a generic sense every violation of an easement may be considered as a nuisance, although the converse of the proposition does not hold true. In both cases to warrant the interposition of Equity, an irreparable injury must be made to appear, which is not susceptible of adequate compensation in pecuniary damages, or which from the nature of the case would occasion a constantly recurring grievance, such as loss of health, trade, business or destruction of means of subsistence.[83] The protection of easements in the widest sense of that term probably constitutes one of the most important heads of jurisdiction by Injunction.[84] The commoner and most important easements are those relating to air,[85] light,[86] support,[87] water,[88] and way.[89] In India, having regard to the mode of life and usages of the country, the right of privacy is one of importance and is acquirable by custom.[90] The easements named and the issue of Injunctions against their infringement form the subject-matter of the remaining portion of this Chapter.

(i) Air.—Owing to conditions of climate and mode of life, English law has not regarded as of equal value the rights to light and air.[91] The right to have air coming to an ancient window or other aperture in a building is an undisputed right, but a right by way of easement to the access of air over the general unlimited surface of a neighbour cannot be acquired by mere enjoyment, and so it has been held that there is no right that the owner of a windmill shall have the streams of wind accustomed to flow over neighbouring land to his mill

---

Gale *on Easement*, 15th ed. p. 418; and *Chunilal Mancharam* v. *Manishankar Atmaram*, 18 B. 616 (1893). The rule enacted by cl. (f) as to easements created on a partition of joint property is applicable in parts of India where the Act is not in force. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. O.C.J., 181, 185 (1871); *Modhoosoodun Dey* v. *Bissonath Dey*, 15 B. L. R. 361, 367 (1875); *Charu Surnokar* v. *Dokouri Chunder Thacoor*, supra; *Purshotam Sakharam* v. *Durgoj Tukaram*, 14 B. 452 (1890). The case of transfer by contemporaneous conveyances or devises has not been provided for by the section, but the law in India is the same as that in force in England on this point. *The Delhi and London Bank, Limited* v. *Hem Lall Dutt*, 14 C. 839, 853 (1887). As to two tenements held under leases from the same landlords, see *Robson* v. *Edwards*, L.R. 1893, 2 Ch. 146. As to Injunctions in cases of easements acquired by grant, prescription or custom, v. *post*.

83. High, *Inj.*, § 848, *et seq.*; and *see* generally as to Injunctions in cases of easement, Kerr, *Inj.*, 6th ed. Ch. VI; Beach, *Inj.*, Ch. XXVII; Joyce's *Inj.*, pp. 424, 452-463; Joyce's *Doctrines*, 205; Hilliard, *Inj.*, Ch. XXVII; Spelling's *Extraordinary Relief*, § 219, *et seq.*

84. Spelling, *op cit.*, § 219.

85. Act V of 1882, ss. 15, 28, 33; Act IX of 1908, s. 26.

86. *Ib.*

87. *Ib.* (and s. 34, Act V of 1882).

88. *Ib.*

89. Act V of 1882, ss. 15, 28, 33; Act IX of 1908, s. 26 (and s. 34, Act V of 1882).

90. Act V of 1882, s. 18, ill. (*b*).

91. As to the right to air, see *Law Times*, March 13, 1887, pp. 433-436.

CENTRAL LIBRARY

uninterrupted, and that the access of air to the chimneys of a building cannot, as against the occupier of neighbouring land, be claimed either as a natural right of property or as an easement. The distinction appears to be that as the window or other aperture is capable of receiving the air in a definite direction only and in a definite quantity and only requires an open space for a short distance, and as the claim is limited and the enjoyment capable of obstruction by reasonable means, the Court will presume in the case of an ancient window an easement. The converse right that the air in a building should be allowed to escape through or over an adjoining property for the purpose of ventilation is also an easement. The natural right which a person possesses that the air which passes over his land shall not be polluted by others has already been mentioned,[92] but an adverse right to pollute the air may be acquired and when acquired is an easement.[93]

Easements of light and air differ as to their mode of acquisition, for whereas light can only be acquired under the Prescription Act, a prescriptive right to air can only be gained under the Common Law—no mention having been made of such right by the Act.[94] Though the rights of light and air are different and are acquired by different means, it is a frequent though erroneous practice to couple them together as if they were one and the same easement, or as if they were at all events so connected that where there was the one, there was also the other. The only real point in common is that they both exist in connection with windows and other openings in the walls of houses. The nature of the case which would have to be made in an English Court for an Injunction by reason of the obstruction of air is *toto cœlo* different from a case of light. Cases are very rare indeed and must be very special, such as to involve danger to health or something very nearly approaching to that, to justify the interference of the Court on the ground of the diminution of air.[95]

The access of air is in this country of hardly less importance than is that of light,[96] in fact having regard to the way in which daylight is sedulously excluded in this country, and to the almost perpendicular rays of the sun in nine out of twelve months,[97] it may be said to be even of greater importance. It must be taken as a matter of common knowledge that a material interference with it is injurious, not only to the comfort, but to the health of the inmates of the house thus affected.[98]

The Calcutta High Court, however, has followed the English law as above stated.

The application in this matter of this law leads to some inconvenience.[99] In the case last cited Markby, J., observed as follows:—"The reasons for which

---

92. v. *ante*, § 82.

93. Gale *on Easement*, 15th ed. page 283; Halsbury's *Laws of England*, 4th ed. vol. 14 para 239.

94. Halsbury's *Laws of England*, 4th ed. vol. 14 paras 224, 238.

95. *City of London Brewery Company* v. *Tennant*, L.R. 9 Ch. App. 218; Goddard, *op. cit.*, 444, 445; *Aldin* v. *Latimer, Clark Muirhead & Co.*, L.R. 1894, 2 Ch. 445; as to ventilation, see *Bass* v. *Gregory*, 25 Q.B.D. 481.

96. *Nandkishor Balgovan* v. *Bhagubhai Pranballabhadas*, 8 B. 95, 97 (1883), per West J.

97. *Barrow* v. *Archer*, Cor. 9, 11, per Peterson, J.

98. *Nandkishor Balgovan* v. *Bhagubhai Pranballabhadas*, supra.

99. *Modhoosoodun Dey* v. *Bissonath Dey*, 15 B.L.R. 361, 367 (1875).

CENTRAL LIBRARY

apertures are made in the walls of houses in the two countries are very different. In England an aperture is made chiefly for light; the sun being less bright, and the air colder there, we desire to obtain all the light we can; and only to admit just so much air as is necessary for wholesome ventilation; for which reason we always use glass in our windows. In this country the object is precisely the reverse—to get as much air as possible, and to exclude the superfluous light. A comparatively small aperture will in this country light a room; but without a free current of air a room would very often be uncomfortable, and even unhealthy. Hence the frequent omission of glass, and the numerous contrivances of verandahs, jilmils, chicks, hoods and so forth, which are all intended to shut out the light, whilst the air is admitted. But unfortunately the law of England being fashioned upon the wants of the inhabitants of that country has specially favoured the acquisition of the right to free access of light, but has taken very little notice of the right to free access of air. Light and air have indeed very often been treated as one and the same easement; the right being looked upon as the right to have the aperture unobstructed, the owner using it for whatever purpose he pleased. This was the mode in which I dealt with the case when assessing the damages in *Bagram* v. *Khettranath Karformah*,[1] but the Court of Appeal took a different view. As I understand Sir Barnes Peacock's judgment, he considers that the right to air stands now, as it did when *Alldred's Case*[2] was decided upon the ground of health, and that the Court interferes upon the ground of nuisance.[3] This no doubt is in strict accordance with the English law. It is the same view as was taken by Lord Hatherly (then V. C. Wood) in *Dent* v. *The Auction Mart Co.*,[4] where he says:—"There are difficulties about the case of air as distinguished from that of light, but the Court has interfered to prevent the total obstruction of air." He then states that the obstruction in that particular case was one which the Court would recognize 'on the ground of nuisance' and adds this is perhaps the proper ground on which to place the interference of the Court, although in decrees the words 'light and air' are often used together as if the two things went *pari passu*." I think, therefore, I am bound by authority to hold that, in Calcutta, as under the English law, independently of Act IX of 1871, *the only right which can be gained in respect of air is that there shall not be an obstruction which is a nuisance or injurious to health.*[5]

Wherever in India the Easements Act is in force the right to air and the remedies for its infraction are enlarged beyond the limits within which they are confined by the Bengal decisions above cited and are made as extensive as the right and remedies in respect of light. For a suit for damages is maintainable for disturbance of easements, provided that the disturbance has actually caused substantial damage to the plaintiff. And where the easement disturbed is a right

---

1. 3 B.L.R., O.C.J., 18.
2. 9 Rep. 58.
3. "In other words, to render the house unfit for the ordinary purposes of habitation or business," *per* Sir Barnes Peacock in *Bagram* v. *Khettranath Karformah*, supra.
4. L.R. 2 Eq. 238, at page 252.
5. *Modhoosoodun Dey* v. *Bissonath Dey*, supra, followed. *The Delhi and London Bank, Ld.* v. *Hem Lall Dutt*, 14 C. 839 (1887). [The court in the last mentioned case (citing *Barrow* v. *Archer*, 2 Hyde 129) said where there is sufficient adit for light it will be presumed there will be sufficient adit for air, at p. 860.]

CENTRAL LIBRARY

to the free passage of air to the openings in a house, damage is substantial, if it interferes materially with the physical comfort of the plaintiff though it is not injurious to his health.[6] Subject to the provisions of the Specific Relief Act, an Injunction may be granted to restrain the disturbance of an easement—(*a*) if the easement is actually disturbed, when compensation for such disturbance might be recovered under this Act; (*b*) if the disturbance is only threatened or intended, when the act threatened or intended must necessarily, if performed, disturb the easement.*

It is immaterial whether light and air are admitted through a window or a door. In case of obstruction, the owner of the dominant tenement is in either case entitled to protection. The only question is whether there is an aperture capable of admitting light and air; and such aperture will confer the same legal right, whether it be used exclusively for the passage of light and air and be termed a window or is intended to be used as a means of communication and called a door. This is more particularly the case in this country, where, perhaps, except during the monsoon, a door and a window are almost the same, so far as the admission of light and air is concerned.†

In conformity with the English rule upon the point, a right to unobstructed access of the south breeze, or any other wind, as such, has been held not to be acquirable by prescription, though it might be acquired by express grant, by the law of India as it stood before Act IX of 1871,[7] or under that Act, or Act XV of 1877.[8] In the case of *Barrow* v. *Archer* already cited, the Court observed as follows:—"A plaintiff cannot vest his title to the enjoyment of light and air (not on the principle that if the light be sufficient, the access of air will be presumed to be presumed to be sufficient) on the assumption of a principle that having regard to the climate a party gets a right to the south wind and that the right to light must go to the extent that independently of the light being sufficient, he is entitled to a current of air the same as a current of water, and that the extent of such a current he is entitled to be free from all obstruction. Such a claim is in fact an assertion that a plaintiff gains by prescription a right to have the current of air impinge direct upon his premises in the direction the wind blows, and that it is not sufficient that he gets air ample and sufficient for all sanitary purposes, but that he gets it in the direction from which it blows, undirected by any obstruction, and is in fact co-extensive with a claim to a prospect the right to which has been held not to exist.[9] Were such a principle to be upheld, the consequences would be that to prevent an acquisition of right, the owners of adjoining property on all sides would be compelled to build up against a party, in order to prevent his getting a right to the absence of everything, that could obstruct the direct impinging of the wind."[10] Where it was urged that the Court

---

6. Act V of 1882, s. 33, and explanation III to this section; Halsbury's *Laws of England*, 4th ed. vol. 14 para 237 and also Gale *on Easement*, 15th ed. p. 428.

* Act V of 1882, s. 35.

† *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R., O.C.J. 181, 190 (1871).

7. *Bagram* v. *Khettranath Karformah*, 3 B.L.R., O.C.J. 46 (1869); *Barrow* v. *Archer*, Cor. 9, 11 (1864).

8. *Delhi and London Bank, Ld.* v. *Hem Lall Dutt*, 14 C. 839, 854 (1887).

9. See *Att-Genl.* v. *Doughty*, 2 Ves. 452.

10. *Barrow* v. *Archer*, Cor. 9, 11 (1864) [following *Webb* v. *Bird*, 1 C.B.N.S. 268].

CENTRAL LIBRARY

should decide the question as to the existence of such a right, not on the English cases but according to the circumstances of this country, and the particular winds prevailing, and that a direct breeze from the south was almost a necessity, it was held that it was equally necessary for the Court to see that in studying luxury and comfort it did not make the subservient tenement subservient to more than the law requires, especially as the easement gained is a curtailment of the legal rights of the owner of that tenement. [11]

In coming to a decision whether a building will or will not diminish the air entering the dominant tenement, the Court may consider the circumstance of the building being on the south side from which the air comes during the hottest season of the year. [12]

(ii) Injunctions against obstruction of air.—The right to an Injunction is of course measurable and limited by the extent of the right sought to be protected. From the foregoing paragraph it will have appeared that while under the Easements Act an Injunction may be obtained to restrain the obstruction of air if such obstruction interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health, in other cases the Court interferes upon the ground of health, and in order to justify an injunction the obstruction must amount to a nuisance. In either case the principles regulating the exercise of protective jurisdiction are those which exist for the prevention of all torts and are contained in the Specific Relief Act.

There may be circumstances in a case such as to justify the Court in holding that a covenant not to interrupt the free passage of air to the house of a neighbour may be implied. [13]

(iii) Light.—"Every man on his own land has a right to all the light and air which will come to him, and he may erect, even on the extremity of his land, buildings with as many windows as he pleases. In order to make it lawful for him to appropriate to himself the use of the light, he does not require any consent from the owner of the adjoining land. He, therefore, begins to acquire the right to the enjoyment of light by mere occupancy. After he has erected his building the owner of the adjoining land may afterwards within twenty years build upon his own land, and so obstruct the light which would otherwise pass to the building of his neighbour. But if the light be suffered to pass without interruption during that period to the building so erected, the law implies, from the non-obstruction of the light for that length of time, that the owner of the adjoining land has consented that the person who has erected the building upon his land shall continue to enjoy the light without obstruction so long as he shall continue the specific mode of enjoyment which he had been used to have during that period." [14]

The acquire by prescription a right to the uninterrupted access of light and air through the windows of a dwelling-house, it is sufficient that the building

---

11. *Barrow* v. *Archer*, Cor. 9, 11 (1864) [following *Webb* v. *Bird*, 1 C.B.N.S. 268].

12. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. 181, 190 (1871).

13. *Holl* v. *Lichfield Brewery Co.*, 49 L.J. Ch. 655.

14. *Pranjivandas Harjivandas* v. *Mayaram Samaldas*, 1 Bom. H.C.R. O.C.J. 151, note (1863).

CENTRAL LIBRARY

in respect of which the right is claimed has assumed the appearance and outward aspect of a dwelling-house for more than twenty years before the time of the commencement of the suit, though not completed or used as a dwelling-house for the full period of twenty years before that time. When a building is so far completed as to show an intention to use it as a dwelling-house with certain windows or openings for light and air, from that time it becomes the duty of those who are concerned in preventing a prescriptive right to the access of light and air from arising in respect of such windows to take steps to challenge and hinder the acquisition of such right.[15]

The owner of a house, the light coming to which is obstructed by an erection made upon adjoining land by a person who, *qua* such adjoining land is a trespasser, may possibly have an action against the person causing obstruction, even though he has not obtained by prescription an easement of light. But where the person causing such obstruction is the rightful owner of the adjoining land or acting with the permission of the owner, no such action as aforesaid will lie against him, unless the plaintiff has acquired an easement.[16]

A person has an absolute and indefeasible right under section 25 of the Limitation Act (Act 36 of 1963) to have substantially the same amount of light enter his room through the particular apertures through which it had always passed, or to be indemnified for the diminution of the light caused.[17]

The full prescriptive right to light is thus the right to so much light as has flowed through the particular aperture or apertures during the prescribed period. But the right, in respect of the remedy for its infringement, is subject to limitation and, therefore, the remedy for disturbance of a prescriptive right to light depends upon the obstruction of such light as is sufficient for the comfortable use and enjoyment of the dominant tenement if a dwelling-house, or for its beneficial use and occupation if a place of business.

It is not every speculative exclusion of light or even sensible diminution of light that gives a right of action, but such a diminution of light as really makes the premises to a sensible degree less fit for occupation or business.[18]

"Sir Barnes Peacock lays down substantially the same rule as to interference with light as was laid down by Lord Cranworth in *Clarke* v. *Clarke*[19] and was adopted by the Lords Justices in *Robson* v. *Whittingham*.[20] In *Bagram* v. *Khettranath Karformah*,[21] it is said: 'It would be unreasonable to presume that

---

15. *Pranjivandas Harjivandas* v. *Mayaram Samaldas*, 1 Bom. H.C.R., O.C.J. 148 (1863); see *Bhuban Mohun Banerjee* v. *Elliott*, 6 B.L.R. 85 (1870); as to the use of shutters on windows, see *Ghanasham Nilkant Nadkarni* v. *Moroba Ram Chandra Pai*, 18 B. 480 (1894).

16. *Dhuman Khan* v. *Muhammad Khan*, 19 A. 153 (1896).

17. *Kadarbhai* v. *Rahimbhai*, 13 B. 676 (1889). If the property has been diminished in value, the plaintiff is entitled to recover damages. *Lackersteen* v. *Tarucknath Poramanick*, Cor. 92 (1864).

18. *Barrow* v. *Archer*, Coryton, 11 (1864); and see *Bagram* v. *Khettranath Karformah*, 3 B.L.R., O.C.J. 54. "There is no injury if the plaintiff has still as much light as is necessary for the comfortable habitation of the house." See *Paul* v. *Robson*, 42 C. 46 (1914).

19. L.R. 1 Ch. App. 16.

20. L.R. 1 Ch. 442.

21. 3 B.L.R., O.C. 18 at p. 50 (1869).

CENTRAL LIBRARY

the owner of the servient tenement intended to grant a right to the use of more light than was necessary for the comfortable and convenient habitation of the dwelling house or that he intended to increase the value of his neighbour's house by reducing the value of his own land. Principles of general convenience, upon which the presumptions of right to light by prescription or grant depend, require that lights in a dwelling-house, which have been uninterruptedly used for a long time, should not be darkened so as to render the house unfit for comfortable habitation, but they do not require such a presumption as would impede the erection of buildings on the servient tenement which would not deprive the dominant house of any degree of what was reasonably necessary for comfortable habitation.'

The case of *Bagram* v. *Khettranath Karformah*[22] lays down the law independently of the Indian Statute in accordance with the English Chancery decisions independently of the English Statute; and this I must accept as the law of Calcutta also, namely, that by enjoyment only the right to so much *air* can be gained as is necessary to avoid a nuisance, *and only the right to so much light as is necessary for comfortable habitation.*"[23]

A plaintiff is entitled to stand on his right and not to depend upon the degree of consideration which the defendant may show him from time to time. So it is no answer to say that there will be reflected light from the wall of the new and obstructing building when it is whitewashed. A plaintiff is not bound to put up with reflected light even if it would not be incomparably less than the direct sky-light; moreover, there is no means of ensuring the wall being kept whitewashed, or in a state to reflect light.[24] When a room was made so dark that the plaintiff opened a sky-light which helped to illuminate all the rooms at date of suit, the Court observed that a person was not bound to open a sky-light in his roof because his neighbour blocks the light and air out.[25]

The right to unobstructed light is not diminished by the circumstance that the possessor of that right has either by purchase from, or by the free gift of, any other person, or by the operation of any Act of the Legislature obtained

---

22. 3 B.L.R., O.C. 18 at p. 50 (1869).

23. *Modhoosoodun Dey* v. *Bissonath Dey*, 15 B.L.R. 370, 371 (1875); and see *Benode Coomaree Dassee* v. *Soudaminey Dossee*, 16 C. 256, 257 (1889) [a person is entitled to so much use and access of *light* as is reasonably necessary for the comfortable habitation of his premises, and to so much of the use and access of *air* as may 'be necessary to prevent his premises being rendered unfit for habitation or business]. See also *The Delhi and London Bank* v. *Hem Lall Dutt*, 14 C. 839 (1887); *Jamnadas* v. *Atmaram*, 2 B. 133 (1877); *Muthu Krishna Ayyar* v. *Somalinga*, 36 M. 11(1911). There are cases in which the Court will interfere when the obstruction is slight and injury trifling, but these are very rare and depend upon exceptional circumstances. Halsbury's *Laws of England*, 4th ed. vol. 14 paras 212, 213, 214, 215; Gale *on Easement*, 15th ed., p. 278.

24. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. 181, 191, 192 (1871), citing *Straight* v. *Burn*, L.R. 5 Ch. App. 163, and *Dent* v. *Auction Mart Co.*, L.R. 2 Eq. 238; *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, 479 (1894); [but see also *ib.*, p. 485 in appeal]. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 252, 256 (1888).

25. *Lackersteen* v. *Tarucknath Paramanick*, Cor., 92 (1864).

CENTRAL LIBRARY

other light in addition to that which he had a prescriptive right to.[26] The owner of ancient lights may improve his light but must not increase it.[27]

Where there was a roof to the plaintiff's verandah, not of a permanent character, built by the orders of the plaintiff himself, the effect of which was to intercept the direct sky-light, and it was contended by the defendant that, as the plaintiff had diminished his light and air by his own act, the question of material diminution of comfort must be determined with regard to that diminished light; it was held that as the evidence showed that the plaintiff had put a covering to the wooden rafters which could be placed or removed according to circumstances, he had done nothing which could be deemed equivalent to a surrender of his light, or disentitle him to the same amount of light and air as he enjoyed when he first took possession of the property. A person may wish to accommodate the light and air to the season of the year, but that is no reason why he should be deprived of it at all times.[28] So the fact that a window is not often opened, and that in the monsoon windows are closed at the foot by *dammar* and tiles to keep out the wet, is not an objection, as a plaintiff may regulate his use of his windows any way he likes.[29]

Under the Easements Act also a suit for disturbance of easement will lie, provided that the disturbance has actually caused substantial damage to the plaintiff; that is, where evidence of the easement is affected, or the value of the dominant heritage is materially diminished, or the damage interferes materially with the physical comfort of the plaintiff or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.[30]

Kekewish, J., in the undermentioned case[31] summarised the law relating to the remedies available upon obstruction of light as follows: "There are two classes of cases. If you interfere with the access of light to a man's window to the extent of 2 per cent., or 3 per cent., or even perhaps 10 per cent., or more, where it enters in large quantities, the Court declines to interfere. Sir George Jessel used to say that was a case in which no action could be maintained either in Law or in Equity. No jury would give damages, and the Court of Chancery would not grant an Injunction. Then there is a second class of cases, where there is an interference of light of a serious character, but yet not really a practical interference with the comfortable enjoyment of the plaintiff's premises. For that probably small damages would be sufficient. Then there is a third class of cases, where the interference is of a grosser kind; there, of course, an Injunction would follow with costs."

---

26. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, 478, following *Dyers' Co.* v. *King*, L.R. 9 Eq. 438, 442.

27. *Tapling* v. *Jones*, 11 H.L. 290; see *Lackersteen* v. *Tarucknath Paramanick*, Cor. 92 (1864); *Provabutty Dabee* v. *Mohendro Lall Bose*, 7 C. 453 (1881); as to new building, erected on site of an ancient building, see *Pendarves* v. *Munro*, L.R. 1892, 1 Ch. 611.

28. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. 181, 190, 191 (1871).

29. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 252, 256 (1888).

30. Act V of 1882, s. 33; Katiyar's *Easements and Licences*, 10th ed. pp. 683-685.

31. *Lazarus* v. *Artistic Photographic Company*, (1897), L.R. 2 Ch. 218.

CENTRAL LIBRARY

(iv) Injunction against obstruction of light.—If a landlord conveys one of two classes to another he cannot afterwards do anything to derogate from his grant.[32] But the maxim that a grantor shall not derogate does not entitle a grantee of a house to claim an easement of light to an extent inconsistent with the intention to be implied from the circumstances existing at the time of the grant and known to the grantee.[33]

According to section 35 of the Indian Easements Act (which substantially expresses the rule applicable in Territories to which the Act does not extend) subject to the provisions of the Specific Relief Act relating to Injunctions, an Injunction may be granted to restrain the disturbance of an easement (*a*) if the easement is actually disturbed, when compensation for such disturbance might be recovered; (*b*) if the disturbance is only threatened or intended, when the act threatened or intended, must necessarily, if performed, disturb the easement.

Where there has been an obstruction of an easement to light and air, the question whether the relief should be by way of Injunction or damages, is one of no little difficulty.[34]

The decisions of the English Courts (bearing upon the principles regulating the grant of an Injunction) down to the years 1871, 1888 and 1894, respectively, have been reviewed in the Bombay High Court by Sargent, C.J., in three judgments from which the following excerpts are taken. In the first of those cases, decided prior to the passing of the Specific Relief Act,[35] he said:—"Now the Court of Chancery in England has, in the course of the last seven or eight years, had frequently to consider the question of obstruction to light and air, and the principles upon which the Court will interfere by Injunction either to prevent, or prohibit the continuance of, the alleged obstruction. The perusal of those cases beyond question leads to one conclusion—a conclusion referred to by the present Lord Chancellor when sitting as Vice-Chancellor Page Wood in the case of *Dent* v. *Auction Mart Co.*,[36] namely, that there are many obvious cases of new buildings darkening those opposite to them, but not in such a degree that an Injunction could be maintained or an action upon the case, which, however, might be maintained in many cases which could not support an Injunction. When, however, we pass to the application of that proposition to the varying circumstances of alleged obstructions, we find that the learned Judges, be they Vice-Chancellors or Chancellors, have differed materially both in their mode of stating the principles upon which that doctrine is to be applied and still more, perhaps, in the application of the doctrine to the actual circumstances before them. Now the earliest of the recent cases in which the matter has been fully considered is that of *Jackson* v. *The Duke of Newcastle*,[37] before Lord Westbury. His Lordship, after referring to the judgment of Lord Eldon in *The Attorney-General*

---

32. *Aldin* v. *Latimer, Clark, Muirhead & Co.*, L.R. (1894) 2 Ch. 442.
33. *Birmingham, Dudley & District Banking Co.* v. *Ross*, 38 Ch. D. 295.
34. *Kadarbhai* v. *Rahimbhai*, 13 B. 676 (1889).
35. *Ratanji H. Bottlewalla* v. *Edulji, H. Bottlewalla*, 8 Bom. H.C.R. 181, 186-189 (1871). See also *Sarojini* v. *Krishna*, 36 C.L.J. 406.
36. *Dent* v. *Auction Mart Co.*, L.R. 2 Eq. 238 (1866).
37. *Jackson* v. *The Duke of Newcastle*, 33 L.J. Ch. 698. It has been stated that the principle of law in this case appears to have been widened by recent decisions; *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 136, 137 (1877).

CENTRAL LIBRARY

v. *Nichol,*[38] says: 'The foundation of the jurisdiction appears to be, that injury to property which renders it in a material degree unsuitable for the purposes to which it is now applied, or lessens considerably the enjoyment which the owner now has of it. The Court considers that injury of this nature does not admit of being measured and redressed by damages. In *Johnson* v. *Wyatt*[39] before the Lords Justices, the Lord Justice Turner says: 'I think that at all events a plaintiff coming to this Court for its interference in a case of this nature is bound to show that the obstruction is such as will render the house occupied by him, if not of less value, less fit, or at least substantially less comfortable, for the purposes of occupation. In *Dent* v. *Auction Mart Co.,*[40] the present Lord Chancellor, then Vice-Chancellor Wood, having, as he says, considered the question in every possible way, arrived at the conclusion that, when substantial damages would be given at law, as distinguished from some small sum—£5, £10, or £15—the Court would interpose by Injunction. However, he admits that he feels some difficulty with reference to recent authorities, and that the decision of the Lords Justices in *Robson* v. *Whittingham*[41] is scarcely reconcilable with such a principle. In *Martin* v. *Headon,*[42] Vice-Chancellor Kindersley says, that whenever it is shown that the comfort or enjoyment of a man or of his family in the occupation of his house is seriously interfered with, there is sufficient ground for the interference of the Court: and lastly, in *Staight* v. *Burn,*[43] Lord Justice Giffard says: 'I take the course of this Court to be, that when there is a material injury to that which is clear legal right, and it appears that damages, from the nature of the case, would not be a complete compensation, this Court will interfere by Injunction.'

The statements of the learned Judges in the two last cases, taken together, seem to be as lucid and complete an exposition of the principle on which the Court interferes in cases of this nature as the subject admits of.

It is to be remarked that in both those cases the learned Judges said they would have granted a mandatory Injunction, had it been asked for in the first case and had the question been before the Court at the hearing in the latter.

In *Dent* v. *Auction Mart Co.,*[44] an Injunction, both preventive and mandatory, was granted; and in *Johnson* v. *Wyatt*[45] the question before the Court involved the right to an Injunction of either description. It is clear, I think, therefore, that the learned Judges had the remedy by mandatory Injunction in contemplation, when they laid down the principle upon which the Court interferes. This is clearly so with respect to Lord Westbury from his Lordship's remarks in *Isenberg* v. *East India House Estate Company.*[46]. He says: 'The remedy given by the Common Law for a grievance of this description is an action for damages—that action is liable to be resorted to so long as the cause of damage continues. Upon that ground, and by reason also of the damage in many cases not admitting of being estimated in money, this Court has assumed jurisdiction. Now this

---

38. *The Attorney-General* v. *Nichol,* 16 Ves. 342.
39. *Johnson* v. *Wyatt,* 23 L.J. Ch. 394.
40. *Dent* v. *Auction Mart Co.,* L.R. 2 Eq. 238 (1866).
41. L.R. 1 Ch. App. 442 (1866).
42. *Martin* v. *Headon* L.R. 2 Eq. 425 (1865).
43. *Staight* v. *Burn,* L.R. 5 Ch. App. 163 (1869).
44. L.R. 2 Eq. 238 (1866).
45. 33 L.J. Ch. 394 (1863).
46. 33 L.J. Ch. 392 (1863). *See* also as to mandatory Injunctions, *post.*

CENTRAL LIBRARY

jurisdiction, so far as it partakes of the nature of a preventive remedy—that is, prohibition of further damage, or an intended damage—is a jurisdiction that may be exercised without difficulty and rests upon the clearest principles. But there has been superadded to that the power of the Court to grant what has been denominated a *mandatory Injunction,* that is, an order compelling a defendant to restore things to the condition in which they were at the time when the plaintiff's complaint was made. The exercise of that power is one that must be attended with the greatest possible caution. I think, without intending to lay down any rule, that it is confined to cases where the injury done to the plaintiff cannot be estimated and sufficiently compensated by a pecuniary sum that is, according to his Lordship's remarks in *Jackson* v. *Duke of Newcastle,*[47] when the interference with the light and air renders it, in a material degree, unsuitable for the purposes to which it is applied.'

In *Durell* v. *Pritchard,*[48] Lord Justice Turner says: 'The authorities upon this subject lead, I think, to these conclusions, *that every case of this nature must depend upon its own circumstances,* and that this Court will not interfere by way of mandatory Injunction, except in cases in which extreme, or, at all events, very serious, damage will ensue from its interference being withheld.' The language used by Lord Westbury and Lord Justice Turner is undoubtedly somewhat stronger than that employed by the learned Judges in the more recent decisions in 1866, of *Dent* v. *Auction Mart Co.,*[49] *Martin* v. *Headon,*[50] and *Staight* v. *Burn,*[51] and shows, doubtless, that the tendency of the *decisions is towards a less sparing exercise* of the *jurisdiction than formerly prevailed* and that, too, on the ground that the interference with *light* and *air* is not merely a nuisance, but an interference with that which, as Vice-Chancellor Kindersley says in *Martin* v. *Headon,*[52] is, as a matter of principle, just as much part of the property of a man as his land or his house, and just as much entitled to protection as any other property."[53]

The same learned Judge again[54] in 1888, subsequent to the date of the passing of the Specific Relief Act, reviewed the English decisions to date, saying as follows:—

"The power of the Courts of India to grant a perpetual Injunction is determined by the Specific Relief Act, I of 1877, section 54 [*now represented by s. 38 (3) of Act 47 of 1963*] * which provides that the Court may grant such an Injunction 'when the defendant invades, or threatens to invade, the plaintiff's right

---

47. 33 L.J. Ch. 698 (1863).

48. L.R. 1 Ch. App. 244 (1865).

49. L.R. 2 Eq. 238 (1866).

50. L.R. 2 Eq. 425 (1865).

51. L.R. 5 Ch. App. 163 (1869).

52. L.R. 2 Eq. 425 (1865).

53. *Ratanji H. Bottlewalla* v. *Edalji H. Bottlewalla,* 8 Bom. H.C.R., O.C.J. 186-189 (1871), *per* Sargent, C.J.

54. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa,* 13 B. 252, 259-262 (1888); followed in *Sultan Nawaz Jung* v. *Rustomji Nanabhai,* 20 B. 704 (1869). In this case no Injunction was given, but the plaintiff was held entitled to substantial damages. *Muthu Krishna* v. *Somalinga,* 36 M. 11 (1911).

**Italics* in brackets are supplied.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

to, or enjoyment of, property; and 'where the invasion is such that pecuniary compensation would not afford adequate relief.' It is to be remarked that this limitation of the power of granting an Injunction *is identical with the conditions upon which the Court of Equity in England has always asserted the jurisdiction of granting preventive relief* in cases of this nature. In *Attorney-General* v. *Nichol*,[55] Lord Eldon says, 'that the foundation of the jurisdiction appears to be that injury to property which renders it in a material degree unsuitable for the purposes to which it is now applied, or lessens considerably the enjoyment which the owner now has of it. The Court considered that injury of this nature does not admit of being measured and redressed by damages.' In *Staight* v. *Burn*,[56] Lord Justice Giffard says: 'I take the course of this Court to be, that when there is a material injury to that which is a clear legal right, and it appears that damages, from the nature of the case, would not be a complete compensation, the Court will interfere by Injunction.' By Lord Cairns' Act (21 and 22 Vic., c. 27), the Court of Chancery is empowered, if it thinks fit, to award damages instead of granting an Injunction in cases falling within its jurisdiction, and since that Act has had to exercise the same discretionary power when the question has arisen whether damages or preventive relief should be granted. The particular effect of that Act does not appear to have received much consideration, until the entire question of the right to ancient lights and the appropriate relief in cases of obstruction was examined by Sir G. Jessel in *Aynsley* v. *Glover*.[57] The full discussion it then received makes it unnecessary to refer to earlier authorities. The Master of the Rolls in that case, after discussing the earlier decisions, which doubtless reveal a great variety of opinions, expresses his own view to be, 'that, wherever an action can be maintained at Law, and really substantial damages, or perhaps, I should say, considerable damages, can be recovered at Law, there the Injunction ought to follow in Equity, generally, not universally.' He then refers to Lord Cairns' Act, and points out that the Act gives a new power to the Court, purely discretionary, to substitute damages in cases in which before the passing of the Act, this Court would have granted an Injunction expressing an opinion that it is 'a reasonable discretion and *must depend upon the special circumstances of each case* whether it ought to be exercised'; and as an illustration of its application, he refers with approval to *Curriers' Company* v. *Corbett*[58] as showing that where the defendant's building has been already erected, the Court will take into consideration the fact of the injury to the plaintiff being of a slight nature (although sufficient to sustain an Injunction) as contrasted with the serious damages to the defendant.

The subsequent decisions by the Master of the Rolls, *Smith* v. *Smith*,[59] and *Krehl* v. *Burrell*,[60] afford further illustrations of the principle on which the

---

55. 16 Ves. Jun. at p. 342 (1809).
56. 5 Ch. App. 163, at p. 167 (1869).
57. L.R. 18 Eq. 456 at pp. 553, 554 and 555 (1874). "In our opinion the rule of law in such cases (light and air) was correctly laid down by Sir George Jessel in *Aynsley* v. *Glover*, and by the late Mr. Justice Pearson in *Holland* v. *Worley*, *per* Edge, C.J. and Knox, J., in *Yaro* v. *Sana-ullah*, 19 A. 259, 260 (1897)."
58. 2 Dr. & Sm. 355 (1865).
59. L.R. 20 Eq. 500, at p. 505 (1875).
60. L.R. 7 Ch. Div. 551, at p. 554 (1877).

CENTRAL LIBRARY

discretion vested in the Court of Equity of awarding damages in lieu of an Injunction should be exercised. In *Holland* v. *Worley*.[61] Mr. Justice Pearson, after referring to the above decisions by Sir G. Jessel, laid down the rule which he said he thought would be in accordance with the view of the Master of the Rolls, that in those cases where the injury would not be so serious, where the property might still remain the plaintiff's and be as substantially useful to him as it was before, the Court may, if it thinks fit, exercise the discretion given it by the Act, and in that case, after pointing out that the property would not be useless for the purpose for which it was employed, he held that, "looking at the nature of the property, and considering its situation in the heart of a great city like London," he would not be wrong in exercising his discretion by giving the plaintiff damages. This case has been referred to in terms of implied disapproval by Bacon, V.C., in *Greenwood* v. *Hornsey*,[62] and it may be that Mr. Justice Pearson's ruling which undoubtedly modified the generally received practice of the Court of Equity, may not be followed in England.

The *question, however, whether damages are a sufficient compensation, does not, we think, present itself to the Courts of this country in precisely the same manner and form as it does to a Court of Equity in England.* This latter Court, in awarding damages under Lord Cairns' Act, exercises a discretionary power in departing from the Specific Relief, which it had hitherto exclusively afforded; and could scarcely be expected to take so broad a view of the subject as the Courts of this country, whose 'duty' it is under the Specific Relief Act not to grant an Injunction where damages offered adequate compensation. The result has been that this Court has in several cases adopted the view taken by Pearson, J., as being one which, if applied with caution, is suited to the circumstances of this City, which from its nature can in most parts of it only extend itself vertically upwards; and we think, therefore, that it ought to be considered as the general practice of this Court, although doubtless one to be administered with much care and *with due regard to the special circumstances of each case.*" [63]

Again, in a still later case[64] decided in 1894, the same learned Judge again reviewed the English decisions and their bearing upon the provisions of the Specific Relief Act as follows:—

"At this stage, it will be convenient, I think, to consider the authorities bearing on this class of questions. The English cases were discussed at length in *Dhunjibhoy Cowasji* v. *Lisboa*,[65] and the conclusion arrived at is that the view

---

61. L.R. 26 Ch. Div. 585, at p. 587 (1884); this case was approved in *Yaro* v. *Sana-ullah*, 19 A. 259, 260 (1897).

62. L.R. 33 Ch. Div. 471 at p. 476 (1886). In *National Telephone Company* v. *Baker*, L.R. (1893)2 Ch. 196 Kekewich, J., referring to *Holland* v. *Worley*, said "that case has not commanded the approbation of the profession." See also *Martin* v. *Price*, L.R. (1894)1 Ch. 276, 280.

63. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 259-262 (1888), *per* Sargent, C.J. The rule in *Holland* v. *Worley* was also followed in *Kadarbhai* v. *Rahimbhai*, 13 B. 674, 677 (1889), and the case was approved in *Yaro* v. *Sana-ullah*, 19 A. 259, 260 (1897); Gale *on Easement*, 15th ed. p. 428.

64. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, 483, 484, 487-489 (1894); followed in *Sultan Nawaz Jung* v. *Rustomji Nanabhoy*, 20 B. 704 (1896).

65. 13 B. 252 (1888).

CENTRAL LIBRARY

taken by Pearson, J. (in *Holland* v. *Worley* [66] when discussing Lord Cairns' Act), 'if applied with caution is suited to the circumstances of this City, which, from its nature, can in most parts of it only extend itself vertically upwards;' and, we think, therefore, that it ought to be considered as the general practice of this Court, although doubtless one to be administered with much care and with due regard to the special circumstances of each case. Mr. Justice Pearson, in his judgment in the above case (see page 587), after referring to *Smith* v. *Smith* [67] where Jessel, M.R., discusses the application of the above Act, which enable the Court of Chancery to give damages in a case in which an Injunction would otherwise have been given, draws the conclusion that, 'where the property may still remain the plaintiff's (*i.e.*, as distinguished from the case where the only fair compensation would virtually be tc make the plaintiff sell his property to the defendant) and be substantially useful to him as it was before,' the injury is one which can in that case be properly compensated by money. This view of Lord Cairns' Act is spoken of by Kekewich, J., in *Dicker* v. *Popham Radford & Co.*, [68] as not laying down any new rule, and as amounting to no more than that (as had already been said in several cases) where there is a discretion exerciseable, the Court is bound to look at all the circumstances of the case. In this country the jurisdiction of the Civil Court in granting relief by Injunction is given by the Specific Relief Act (47 of 1963). Section 38(3)(e) of the Act provides that it may be granted in certain cases, one of which is where pecuniary compensation would not afford adequate relief. No doubt the jurisdiction of the Court of Chancery in questions of relief by Injunction, etc., as stated by Lord Eldon in *Attorney-General* v. *Nichol* [69] and explained by Vice-Chancellor Wood in *Dent* v. *Auction Mart Co.*, [70] and by Sir G. Jessel in *Aynsely* v. *Glover* [71] is treated as existing where substantial damages would be given by a Court of Law. But the Court has the jurisdiction both of a Court of Law and Equity, and in the exercise of the discretion will regard the materiality of the injury in the sense in which that expression was used by Sir G. Jessel in *Smith* v. *Smith* [72] and which, as pointed out by Fry, J., in *National Provincial Plate Insurance Company* v. *Prudential Insurance Company*, [73] means something more than is sufficient to give the Court jurisdiction to grant an Injunction, and may depend on all the circumstances of the case. [74]

When the Specific Relief Act was passed in 1877, the law in England on the subject of Injunctions restraining the obstruction of ancient lights was this: A plaintiff who had sustained, or who was likely to sustain, material injury entitling him to substantial damages by reason of the obstruction or proposed obstruction of his ancient lights by the defendant's buildings, was, in the absence of special circumstances, entitled to an Injunction, according to the established

---

66. L.R. 26 Ch. D. 578 (1884).
67. L.R. 20 Eq. 500 (1875).
68. 63 Law Times Reports at p. 381 (1890).
69. 16 Ves. at p. 342 (1809).
70. L.R. 2 Eq. 238 (1866).
71. L.R. 18 Eq. 544 (1874).
72. L.R. 20 Eq. 500 (1875).
73. L.R. 6 Ch. D. 768 (1877).
74. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 483, 484 (1894).

CENTRAL LIBRARY

principles of Courts of Equity: *Martin* v. *Price*.[75] Lord Cairns' Act had, however, conferred upon Courts of Equity the power to award damages to the party injured, either in addition to, or in substitution for, an Injunction, in cases in which those Courts had jurisdiction to entertain an application for an Injunction. That power was a discretionary one, but the law as to the circumstances under which the Courts would exercise that discretion was in an unsettled state, and no clear rules for the guidance of the Court had been established by the decisions: *Holland* v. *Worley*.[76] Even now it is an open question whether damages in lieu of an Injunction can be awarded by way of compensation for an injury not yet committed, but only threatened and intended: *Martin* v. *Price*.[77] Section 33 of the Easements Act, 1882, lay down for us the law as to the case in which damages or compensation can be awarded, and sets that question at rest. The Specific Relief Act (47 of 1963) section 38(3) enacts that when the defendant invades or threatens to invade the plaintiff's right to or enjoyment of property, the Court may grant a perpetual Injunction in the following cases:—(*c*) When the invasion is such that pecuniary compensation would not afford adequate relief. (I omit clauses (*a*), (*b*), (*d*) and (*e*) as not specially applicable to the present circumstances.) The Court has under that section jurisdiction to grant an Injunction only in those cases where pecuniary compensation would not afford adequate relief. The expression 'adequate relief' is not defined, but it is probably used in the sense in which Kindersley, V.C., uses it in *Wood* v. *Sutcliffe*[78] as meaning such a compensation as would, though not *in specie*, in effect place the plaintiffs in the same position in which they stood before. If that be the correct meaning of the phrase, it is, I think, difficult to predicate of any material obstruction to ancient light that pecuniary compensation for it would in effect place the plaintiff in the same position as before, and, more particularly so, where the light is obstructed in a house in which a man is himself residing.

It does not, however, follow that in such cases a plaintiff is entitled as of right to an Injunction. Under the Specific Relief Act, the Courts are given a discretion to grant or withhold an Injunction, as in England they have a discretionary power to award damages in lieu of an Injunction. In this view of the law, the Court has to consider in each case, not merely whether the plaintiff's legal right has been infringed, or even materially infringed, *but also whether under all the circumstances of the case he* ought to be granted an Injunction as *the proper and appropriate remedy for such infringement.*

Two principles are deducible from the English case: (*i*) That Courts ought not to interfere by way of Injunction when obstruction of light is very slight and where the injury sustained is trifling, except in rare and exceptional cases: *Dent* v. *Auction Mart Co.*;[79] *Herz* v. *Union Bank of London;*[80] and (*ii*) that where the defendant is doing an act which will render the plaintiff's property absolutely useless to him, unless it is stopped, in such a case, inasmuch as the only compensation which could be given to the plaintiff, would be to compel the defendant

---

75. L.R. (1894)1 Ch. 276. See as to this case, *post*.
76. 26 Ch. D. 578 at p. 587 (1884).
77. L.R. (1894)1 Ch. 276.
78. 21 L.J. Ch. at p. 255 (1861).
79. L.R. 2 Eq. 238 (1866).
80. 2 Giff. p. 686 (1859).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

to purchase his property out and out; the Court 'will not, in the exercise of its discretion, compel the plaintiff to sell his property to the defendant' by refusing to grant him an Injunction and awarding him damages on that basis (see *Holland* v. *Worley*).[81] Between these two extremes, where the injury to the plaintiff would be less serious, where the Court considers the property may still remain with the plaintiff and be substantially useful to him as it was before, and where the injury is one of a nature that can be compensated by money, the Courts are vested with a *discretion* to withhold or grant an Injunction, *having regard to all the circumstances of the particular case* before them, including the fact that the premises are situated in a City like this, where land suitable for building is limited and very valuable, and where property owners should, so far as is possible, consistently with the existing rights of their neighbours, be allowed to utilize it to the utmost extent.

Mr. Scott, for the respondent, contended that the present was a case for an Injunction, because it fulfilled the conditions of section 54, sub-clause (*b*), inasmuch as there was no standard for ascertaining the actual damage caused or likely to be caused by the invasion. I think, however, that this sub-clause has rather application to such cases as are referred in the illustrations, (*h*) and (*i*) to the section, where there is no possible standard with reference to which the contemplated injury can be compensated than to a case of injury to property like a house occupied by its owner in danger of being deprived of its ancient light. Juries have never experienced any insuperable difficulty in cases of the latter kind. In earlier times, before the passing of Lord Cairns' Act, Courts of Common Law rather than Courts of Chancery were resorted to in cases of obstruction of ancient lights :—Goddard (*on Easement*, 3rd Ed.), p. 423—the aid of the Court of Chancery being invoked in later times on account of damages being an inadequate remedy, or inappropriate to the circumstances of the case."[82]

In the undermentioned decision of the Madras High Court,[83] it was said:—

"Assuming that the plaintiffs are entitled to compensation, the Court may grant a perpetual Injunction in respect of an invasion of a right to, or enjoyment of, property, when the invasion is such that pecuniary compensation would not afford adequate relief.

This test is in practice a difficult one to apply. On the one hand, it may be said, that there can be no disturbance of an easement on which a pecuniary value cannot be placed, because it is always possible to ascertain the difference in the selling value of the property brought about by the obstruction of which complaint is made. On the other hand, if the phrase means 'such a compensation as would, though not *in specie*, in effect place the plaintiffs in the same position in which they stood before,' it would, as observed by Farran, J., be difficult to predicate of any material obstruction to ancient lights that pecuniary compensation could bring about that result; *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*.[84] Only in the case in which the money might be spent in the structural alteration or re-arrangement of the premises could that result possibly

---

81. L.R. 26 Ch. D. 578 (1884).

82. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 487-489, *per* Sargent, C.J.

83. *Boyson* v. *Deane*, 22 M. 251, 253 (1899), *per* Shephard, Offg. C.J.

84. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, at p. 488 (1894).

CENTRAL LIBRARY

be produced. The question really comes to be one of degree. At the one end of the scale is the case in which the plaintiff's building will be rendered useless, unless the proposed building is stopped. At the other is the case in which diminution of light is comparatively small though still substantial. If I may take *Martin* v. *Price* [85] as a statement of the English law on the subject, I think it must be admitted that it is *different from the law we have to administer here under the Specific Relief Act* and the Easements Acts: see *Dhunjibhoy Cowasji Umrigar* v. *Lisboa* [86] and *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai.* [87] In *Martin* v. *Price* [88] the evidence was to this effect: The plaintiff's house standing on ground higher than the level of the houses opposite, faced a street from 35 to 37 feet wide: opposite was a house having an elevation of 37 feet and a frontage of 77 feet. For that house defendant proposed to substitute one having a frontage of 27 feet and a height of 62 feet. Kekewich J., having regard among other things, to the term for which plaintiff held, gave judgment for £120 damages and refused an Injunction. The Court of Appeal held that as the plaintiff had sustained material injury he was entitled to an Injunction *in the absence of proof of circumstances depriving him of the* prima facie *right.* No reference was made to the test prescribed by the Specific Relief Act. *According to that decision, the rule of English law is the converse of the rule prevailing here.* There the right to an Injunction is the *prima facie* right: *here an Injunction is not to be given when the remedy in damages is considered adequate.* For a statement of the law in terms more consonant with that which we have to administer, I would refer to Lord Westbury's judgment in *Jackson* v. *Duke of Newcastle.* [89] This case, decided in 1864, has with reference to another point, been disapproved in later cases. With regard to that other point the Indian Legislature seems to have followed it nevertheless, and it may well have been present to their minds when the Specific Relief Act was being framed. [90] The Madras High Court has granted a mandatory Injunction where the character of the obstruction was such that its consequences was to darken the plaintiff's house so as to make it uncomfortable and in part useless for in such a case damages would not be an adequate remedy. In answer to the contention that in India an Injunction is a remedy which can be granted only in exceptional cases and that the award of damages was the relief to which a plaintiff was generally entitled, the Court said that it was by no means prepared to accede to this contention or that there was any difference in this respect between English and Indian Law. [91]

According to the decisions, therefore, of the Bombay and Madras High Courts, an Injunction might in case be refused where, according to the English case law, it would be granted. [92] The general principle upon which these Courts would or would not grant an Injunction are sufficiently indicated in the judgments already cited. Apart, however, from the general provisions of the Specific Relief Act of

---

85. (1894)1 Ch. 276.
86. 13 B. 252 (1888).
87. 18 B. 474 (1894).
88. (1894)1 Ch. 276.
89. 3 DeG J. & S. 275 at p. 284; v. *ante.*
90. *Boyson* v. *Deane,* 22 M. 253-255 (1899), *per Shephard,* Offg. C.J.
91. *Muthu Krishna* v. *Somalinga,* 36 M. 11 (1911).
92. In *Sultan Nawaz Jung* v. *Rustomji Nanabhoy,* 20 B. 704 (1896), the Court observed, that to Courts subject to the Specific Relief Act the English decisions cited, have no

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

which these cases are an interpretation, no fixed rule can be rigidly laid down upon the question whether an Injunction should or should not issue. Each case must be decided according to its own circumstances. And though the Courts will take care not to unnecessarily impose the burden of an Injunction upon the defendant, they will see that a right of property, which may be said to be of peculiar value in this country, is properly protected and secured. Relief by mere damages will often amount to a forced sale of the plaintiff's easement. An Injunction can be granted wherever substantial damages could be awarded under the English law. It is not, however, easy to reconcile all the English cases on the question of Injunction as opposed to damages; the question is one of degree, and the whole of the circumstances are seldom or never stated.[93]

Any act by which the control of light and air taken out of the hands of the persons entitled to them, or by which the access of light and air to the window of a dwelling-house is interfered with, is *primâ facie* an injury of a serious character.[94] However doubtful it may be in some cases whether damages or an Injunction should be granted, it is clear that a wilful and confident assumption of mastery over another man's property, or the use of it in reliance on mere money, will not be tolerated.[95] So where the defendant enclosed the plaintiff's window within his own house and forced on him the alternative either of closing the window or taking such air through it as the defendant might choose to supply him, it was held that the defendant having thus, without leave or license, taken possession of the plaintiff's window as completely as if he had blocked it up altogether, there was no precedent warranting the substitution of damages for an Injunction in such a case against the will of the party injured.[96] And, when it was proved that a wall intended to be built would so shut out the light and air as to render the room completely dark and unfit for use, the Court granted an Injunction:[97] as also when there was a complete darkening of some of the plaintiff's principal rooms.[98] The Allahabad High Court in the undermentioned case, in which the Bombay decisions cited were relied upon, observed that the rule of law was correctly laid down in the English decisions already referred to of *Aynsley* v. *Glover* and *Holland* v. *Worley*, and that in its opinion it was not intended by (old) section 54 of the Specific Relief Act that a man should not have an Injunction granted to him, unless his property would otherwise be practically destroyed, if the Injunction were not granted. Where there is substantial and wrongful injury to a plaintiff's right he is entitled to an Injunction.[1]

---

application. (*Martin* v. *Price*, supra, *Shelfer* v. *City of London Electric Lighting Co.* (*ante*) and other English cases were cited); *sed quœre*, the provisions of the Specific Relief Act being founded upon, and being the embodiment (with some exceptions) of the English case law.

93. *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B. 97, 98 (1883).

94. *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B. 95 (1883).

95. *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B. 95, 97, 98 (1883) *per* West, J.

96. *Ib.*

97. *Kadarbhai* v. *Rahimbhai*, 13 B. 674 (1889).

98. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 133, 136 (1877), and as to effect of covenants in the lease, see *R. H. Bottlewalla* v. *E. H. Bottlewalla*, 8 Bom. H.C.R., O.C., 181 194; *Leach* v. *Schweder*, L.R. 9 Ch. App. 463.

1. *Yaro* v. *Sona-ullah*, 19 A. 259 (1897).

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

There must have been no delay or acquiescence.[2] It is, however, for the defendant to show that the right has been lost by acquiescence.[3]

In estimating the damage the Court, it has been said, cannot consider whether the place in which the building is, in the country, or in a populous city. So, where it was said that the diminution of light would not seriously or materially affect the enjoyment of the house as a dwelling-house, having regard to what people can reasonably expect in a crowded city like Bombay, it was held that this was a matter which the Court could not consider, and that the only question which the Court has to decide is whether the enjoyment has been seriously interfered with by the obstruction of the light and air.[4] The Court will look not merely to the use to which rooms in a dwelling-house from which light is obstructed are actually put at the time of the obstruction, but also to the use to which they may be put for all reasonable purposes of occupation. That purpose will vary from time to time according to the exigencies of the family; but the mere circumstance, for example, that a room is used as a lumber-room or godown at the date of suit cannot affect the question of enjoyment, which is the right to its enjoyment for all reasonable purposes to which it may be put as a room in a dwelling-house.[5] But, although a plaintiff's light may have been sensibly diminished by the erection of the defendant's building, an Injunction will not be granted unless there has been such a large, material and substantial damage as to require interference by that form of relief, or the plaintiff's rooms have been rendered unfit for the purposes for which they might reasonably be *expected* to be used.[6] So rooms used for

---

2. v. Ch. II, *ante*, *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 137 (1869); Acquiescence of course imports full knowledge: *Gopalnarain Mozoomdar* v. *Muddomutty Gooptee*, 14 B.L.R. 35 (1874).

3. *Nandkishor Balgovan* v. *Bhagubhai Pranvalabhdas*, 8 B. 95 (1883).

4. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. 181, 192 (1871); citing *Yates* v. *Jack*, 1 Ch. 295; *Dent* v. *Auction Mart Co.*, 2 Eq. 238; *Martin* v. *Headon*, ib. 425; see, however, *Pranjivan das Harjivandas* v. *Mayaram Samaldas*, 1 Bom. H.C.R., O.C.J. 148, 154 (1863), in which it was said *per* Sausse, C.J.:—"We think that some modification of the ordinary rights of easement may be necessary and reasonable in a town like Bombay. The great difficulty consists in determining what the extent of that modification should be;" and at p. 156—"It is not the province of the Court to lay down *a priori* any rule for the modification of this right of easement which may arise out of the circumstance of its having been enjoyed in a densely built and populated town. The person who has allowed another to obtain such a right over his property will infringe that right at his peril;" and in *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 489 (1894), *per* Farran, J., it was *held* that the Court in considering whether it will grant or withhold an Injunction may take into consideration the fact that the premises are situated in a city like Bombay, where land suitable for building is limited and very valuable and where property-owners should, so far as is possible consistently with the existing right of their neighbours, be allowed to utilize it to the utmost extent. *See* also *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 262 (1888); *Muthu Krishna* v. *Somalinga*, 36 M. 11 (1911) at p. 15.

5. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R., O.C.J. 181, 192, 193 (1871).

6. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474 485, 490 (1894); following *Aynsley* v. *Glover*, L.R. 18 Eq. 544; and see *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 252, 264 (1888).

CENTRAL LIBRARY

residential purposes at the date of suit, may be such and so placed that it cannot be reasonably expected (though the mode of occupying may be altered and should be taken into account,[7] that they will ever be used for any other purpose.[8] The Court may, however, in particular cases have to consider the damage likely to accrue to the plaintiff within some reasonable time by reason of a probable change in the nature of the occupation of his premises.[9] It is no answer to say if a man's ancient lights be interrupted that there are remedies which he can provide for himself by making changes in his own house.[10]

A person who is in the present enjoyment of an access of light to his premises for a special or extraordinary purpose, such as taking photographic portraits, may obtain an Injunction against interference with that access of light even though he may not have been in the enjoyment of it for that special or extraordinary purpose for the full statutory period of twenty years.[11]

Where it was contended that the question for the Court to consider was exclusively whether in consequence of the defendant's building there would be a material diminution of the light and air through a particular window without taking into consideration the light and air afforded to the room by the other windows in it, it was held that on the contrary the Courts have always recognised as the important point for inquiry whether the comfort of the plaintiff in the use of the room has been materially diminished and in coming to a conclusion as to that it was impossible to disregard the fact that there were other windows in the room through which light and air were obtained.[12]

It has been held that where there is an express covenant, the Court will in the absence of special circumstances compel the defendant to perform his covenant without looking minutely into the nature or extent of the interference. Where the defendant is materially obstructing the light and air to which the plaintiff is entitled, the Court will not go into the question whether or no it seriously affects his enjoyment of the house.[13] But in a subsequent case of breach of contract it was held that the Court should before issuing a mandatory Injunction be satisfied that the obstruction so materially interferes with the comfort and convenience of the plaintiff that the consequences of the breach of the agreement cannot adequately be compensated by damages.[14]

The 45° rule is not a rule of law nor a presumption of fact until it is shown to be applicable;[15] but though not a positive rule of law it is a circum-

---

7. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, 490 (1894); citing *Moore* v. *Hall*, 3 Q.B.D., 178; *Dicker* v. *Popham Radford & Co.*, 63 L.T. 379; and see *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 252, 255 (1888) [further possible use must be considered by the Court].

8. *Ib.*, and see *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 264.

9. *Ib.*; citing *Dicker* v. *Popham Radford & Co.*, supra.

10. Inj., *Muthu Krishna* v. *Somalinga*, 36 M. 11 (1911) at p. 14; *Anath Nath Deb* v. *Galstaun*, 35 C. 661, 671 (1908).

11. *Lazarus* v. *Aristic Photographic Company*, (1897) L.R. 2 Ch. 214.

12. *Dhunjibhoy Cowasji Umrigar* v. *Lisboa*, 13 B. 262, 263 (1888).

13. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. 181, 194, 195 (1871); but as to express covenants, see *ante*.

14. *Ranchod Jamnadas* v. *Lallu Haridas*, 10 Bom. H.C.R. 95 (1873).

15. *Clement* v. *Melony*, Suit 271 of 1883 cited in *Delhi and London Bank, Ld.* v. *Hem Lall Dutt*, 14 C. 849.

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

stance which the Court may take into consideration and is especially valuable when the proof of the obscuration is not definite or satisfactory.[16] Expert evidence is usually given.[17] A photograph may be put in evidence to show the deviation of the light[18] and the Judge may himself personally inspect the premises.[19]

The Court will see that the plaintiff has such possession as will enable him to maintain the action and in case of doubt will direct other persons to be made parties to the suit. When a suit was brought by a person who was only trustee for another and the *cestui que trust* was in possession of the premises, the Court directed that the latter should be made a party.[20] If the obstruction is of a temporary nature the person in occupation alone can sue for damages or an Injunction; but if the obstruction is of a permanent character lessening the value of the reversion or remainder or affecting evidence of the easement, the reversioner or remainderman may sue.[21] When a motion for an Injunction is refused it will be without prejudice to an action for damages.[22] A plaintiff cannot be called upon to accept any other form of relief than damages or an Injunction.[23]

When the Lower Court had by its decree granted an Injunction but the Appeal Court varied that decree and refused an Injunction but ordered the defendant to pay the plaintiff Rs. 500 as damages, it was argued for the defendant (appellant) on the question of costs that he should be given his costs of appeal, as he had succeeded in setting aside the Injunction granted by the Lower Court, and should also get his costs of hearing in the Lower Court, as the whole contest there had been as to the right to an Injunction, which in appeal had been refused. The defendant had paid Rs. 200 into Court, when he filed his written statement, and would have paid more, if he could have obtained any indication from the plaintiff of the amount that would satisfy him. Nothing, however, would satisfy the plaintiff but an Injunction, and he had failed to get it. It was, however, *held* that, under the circumstances, the plaintiff should have his costs of hearing in the Lower Court, and that each party should pay his costs of the appeal and of the proceedings on the rule for an Injunction before the trial. The ordinary rule should be observed, and the costs should follow the event. The event in this case was that the plaintiff had proved his case against the defendant,

---

16. *The Delhi and London Bank, Ld.* v. *Hem Lall Dutt*, 14 C. 858 (1887). See Michell's *Law of Easements*, p. 240; and *Parker* v. *First Avenue Hotel Company*, 24 Ch. D. 288, 289.

17. As to the value of such evidence see *Pranjivandas Harjivandas* v. *Mayaram Samaldas*, 1 Bom. H.C.R., O.C.J. 155 (1862). *Ratanji H. Bottlewalla* v. *Edalji H. Bottlewalla*, 8 Bom. H.C.R., O.C.J. 192 (1871); *Lackersteen* v. *Tarucknath Paramanick*, Cor. 92 (1864): as to experiments see *Leech* v. *Schwedar*, L.R. 9 Ch. App. 463 471; *Lackersteen* v. *Tarucknath Paramanick*, Cor. 91 (1864).

18. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 478 (1894).

19. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 478, 482, 493 (1894); *Bhuban Mohan Banerjee* v. *J. S. Elliott*, 6 B.L.R. 90 (1870).

20. *Lackersteen* v. *Tarucknath Paramanick*, Cor., 91 (1864).

21. *Kino* v. *Rudkin*, L.R. 6 Ch. D 160; *Cooper* v. *Crabtree*, L.R. 20 ch, D, 589; *Wilson* v. *Townsend*, 1 Dr. & Sec 324; *Metropolitan Association* v. *Petch*, 5 C.B., N.S. 504.

22. *Barrow* v. *Archer*, Cor. 9, 11 (1864).

23. *Kadarbhai* v. *Rahimbhai*, 13 B. 667 (1889).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

although he had not got the precise form of relief which he wanted. If a party substantially succeeds, he is entitled to his costs. [24]

If an Injunction has been granted restraining a person from interrupting the access of light and air to certain windows, and the Court considers that the Injunction has been infringed, an attachment will issue, even though the defendant has proceeded according to the advice of his surveyor and legal adviser in constructing the building complained of as a breach of the Injunction. The Court in such cases does not consider itself bound by the opinion of surveyors, but will form its own judgment as to the probable effect of the structure complained of. [25]

An application for attachment for breach of an Injunction should be made by motion on notice to the opposite party. [26]

An Injunction restraining the obstruction of light and air may be enforced against the deceased defendant's legal representative. In the undermentioned suit [27] the plaintiff obtained a decree against defendant, restraining the latter from obstructing the access of light and air to her windows. The plaintiff applied for execution, praying that the portion of the defendant's house which obstructed her windows should be pulled down. While this application was pending the defendant died and his son and heir (the appellant) was brought on the record. The Lower Courts directed that the decree should be executed as prayed for and directed the appellant (the son and heir of the deceased defendant) to pull down the obstructing portion of the house in question within a given time, and in case of his failing to do so, empowered an officer of the Court to have it pulled down. On second appeal to the High Court it was contended (*a*) that as the judgment-debtor had died after the commencement of the proceedings, a fresh application should have been made instead of continuing the *durkhast* issued against him, against his son (the present appellant), and that no notice had been issued under section 248 of the last Civil Procedure Code (Act XIV of 1882) (now represented by Order 21, rule 22); (*b*) that the Lower Courts should have made their orders under section 260 of the last Civil Procedure Code (Act XIV of 1882) (now represented by Order 21, rule 32); and (*c*) that the original defendant having died, the Injunction could not be enforced against his son (the appellant) as an Injunction does not run with the land. *Held,* as to the first objection, that at it was not raised in the Lower Courts, it could not be entertained on second appeal. As to the second objection: *Held* that the order passed by the Lower Courts was wrong. Their order should have been made under section 260 of the last Code of Civil Procedure (Act XIV of 1882) (now represented by Order 21, rule 32). The application for execution was not in proper form, but the High Court allowed it to be amended. As to the third objection: *Held* that having regard to the provisions of section 234 of the last Civil Procedure Code, 1882 (now represented by section 50), the Injunction ordered against the deceased

---

24. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai,* 18 B. 477 (1894), v. *ante.*

25. *Pranjivandas Harjivandas* v. *Mayaram Samaldas,* 1 Bom. H.C.R. 151, 156 (1863), v. *ante.*

26. *Pranjivandas Harjivandas* v. *Mayaram Samaldas,* 1 Bom. H.C.R. 151, 150 (1863); v. *ante.*

27. *Sakarlal* v. *Bai Parbatibai,* 26 B. 283 (1901).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

defendant might be enforced against his son as his legal representative. As to form of decree in light and air cases, see case cited. [28]

(v) Support—Injunctions against withdrawal of support.—Easements relating to support may be of two kinds, either conferring rights to have support or conferring rights to take away support. Such easements are rights to have support additional to, or different from, the support to which a person has a natural right, such as the right of support to a building from land, to a building from another building, and the right to a greater degree of support to a surface stratum, which has been altered by quarrying or otherwise, than such stratum would have required in its natural state. [29] Under the Easements Act, the removal of the means of support to which a dominant owner is entitled does not give rise to a right to revover compensation unless and until substantial damage is actually sustained. [30] Subject to the provisions of the Specific Relief Act an Injunction may be granted to restain the disturbance of an easement of support (*a*) if the easement is actually disturbed, when compensation for such disturbance might be recovered under Chapter IV of the Easements Act; (*b*) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if peformed, disturb the easement. [31] A plaintiff will be entitled to an Injunction, though no damage has been actually sustained up to the time of the institution of the suit, if the facts proved shew that subsidence and damage would be the inevitable result of a continuance, threatened by the defendants, of the excavation. [32]

The Easements Act only declared the existing law as to easements over water. [33] Easements in water are restrictions of those natural rights in water illustrations of which are given in section 7 of that Act. [34] Those easements may exist as to the flow, use and consumption, pollution or the discharge of rain-water upon adjoining land. A right to surface water not flowing and not permanently collected in a pool, tank, or otherwise, and a right to underground water not passing in a defined channel cannot be acquired by prescription. [35]

(vi) Water—Injunctions in respect of rights to water.—Easements regarding the flow of water may exist with regard either to natural or artificial watercourses. A natural stream is a stream whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of Nature only and in a natural and known course. The right to an uninterrupted flow of water in artificial streams is an easement, and the right to

---

28. *Bai Kashi Bai* v. *Purshottam Keshavji*, 25 Bom. L.R. 239 (1923).

29. See Halsbury's *Laws of England*, 4th ed. Vol. 14 paras 168, 170, 174, 180; Gale *on Easement*, 15th ed. p. 312; Kerr, *Inj.*, 6th ed. 195 *et seq.*

30. Easements Act, s. 34.

31. *Ib.*, s. 35.

32. *Bindu Basini Chowdhrani* v. *Jahnabi Chowdhrani*, 24 C. 260 (1896). The principle of this decision which dealt with a natural right of support, applies equally to an easement of support.

33. *Perumal* v. *Ramasami*, 11 M. 16 (1887). See generally as to nuisances relating to water, Kerr, *Inj.*, 6th ed. 229 *et seq.*; Hilliard, *Inj.*, 623-641; High, *Inj.*, §§ 870-885; Beach, *Inj.*, Ch. XXXVII.

34. See Illustrations (*f*), (*g*), (*h*), (*i*), (*j*).

35. Easements Act, s. 17, cls. (*c*), (*d*).

CENTRAL LIBRARY

easement in the flow of water through an artificial watercourse is as valid against the Government as it is against a private owner of land.[36] A proprietor of land on the bank of a river ought to be restrained from erecting a mound, which if completed, would in times of ordinary flood throw the waters of the river on to the ground of a proprietor on the opposite bank so as to overflow and injure them.[37]

As an easement is a limiting right or a right *in alieno solo* the relief awarded by Injunction or otherwise should certainly not be more extensive than what is necessary to its beneficial enjoyment.[38] The interference of the Court in cases of prospective injury very much depends upon the nature and extent of the apprehended mischief and upon the certainty or uncertainty of its arising or continuing. Where there is no case of prospective damage made out, an Injunction will be refused.[39] It must appear from the circumstances in evidence in each case that the interference or obstruction complained of is not a trivial but a substantial injury in order to warrant relief by way of Injunction.[40]

A plaintiff is bound to establish not merely an injury, actual or prospective, caused by the act of the defendant, but an injury caused by the infraction of some legal right which the plaintiff possesses, or by the omission of something which the defendant was legally bound to do.[41]

But enjoyment or user cannot evidence or establish a right greater than the beneficial use made by a plaintiff of the water. Any exclusive right is to be measured by its enjoyment. So as soon as flowing water which is originally *publici juris* is appropriated by an individual his right is co-extensive with the beneficial use to which he appropriates it. And the circumstances under which an artificial course is created may give rights similar to those of a riparian proprietor.[42] Upon findings of fact a presumption may arise that the enjoyment had an origin which conferred a right.[42]

An Injunction will be granted where the injury is one of a constantly recurring kind and from the very nature of the easement, it would be impracticable to estimate an adequate compensation in pecuniary damages as a proper substitute for the relief by Injunction.[44]

The general rule is that a permanent Injunction is only granted, *first*, when some established right has been invaded and, *secondly*, when damage has accrued or must necessarily accrue from the act or omission complained of.[45]

---

36. *Ponnusami Tevar* v. *The Collector of Madura*, 5 Mad. H.C.R. 6 (1869). As to right to drain, see *Basawasvarasvami* v. *Billary Municipal Council*, 38 M. 6 (1912).

37. *Venkatachalam* v. *Zemindar of Sivaganga*, 27 M. 409 (1904); dist. *Gopal Reddi* v. *Chenna Reddi*, 18 M. 158.

38. *Perumal* v. *Ramasami*, 11 M. 19 (1887).

39. *Kristna Ayyan* v. *Vencatachella Mudali*, 7 Mad. H.C.R. 71 (1871).

40. *Ponnusami Tevar* v. *The Collector of Madura*, 5 Mad. H.C.R. 6, 24 (1869).

41. *Prankristo Roy* v. *Huro Chunder Roy*, 10 W.R. 435 (1868).

42. *Kristna Ayyan* v. *Vencatachella Mudali*, 7 Mad. H.C.R. 70 (1872).

43. *Madhub Das Bairagi* v. *Jogesh Chunder Sarkar*, 30 C. 281 (1902).

44. *Kristna Ayyan* v. *Vencatachella Mudali*, 7 Mad. H.C.R. 71 (1871).

45. *Kristna Ayyan* v. *Vencatachella Mudali*, 7 Mad. H.C.R. 71 (1872). As to injunctions of an indefinite nature, see *Kalu Khabir* v. *Jan Meah*, 29 C. 100 (1901).

CENTRAL LIBRARY

Acuiescence in the sense of mere submission to the interruption of the enjoyment does not destroy or impair an easement. To be effectual for that purpose, it must be attributable to an intention on the part of the owner of the dominant tenement to abandon the benefit before enjoyed and not merely to a temporary suspension of the enjoyment, or be evidence by acts or words which had induced the owner of the servient tenement to incur expense in the reasonable belief that the enjoyment had been entirely relinquished. [46]

(vii) Way (—Injunctions against obstruction of way).—Ways are either public, that is highways, or private: and a claim may be made to use a road as a private individual and to use it as one of the public. The former claim is merely a private easement, the latter is one in favour of the public. In the first case a twenty years' enjoyment by the claimant must be proved, in the second no fixed period of enjoyment need be shown. It is sufficient if acts of user by the public are shown to have been acquiesced in by the owner or owners of the land over which the road passes, and that those acts are of such a character as to warrant the inference that the owner or owners intended to make over to the public the right to use the land as a public highway. [47] When a road has been dedicated for the use of the public, the owner of the soil, over which the road runs, is entitled to exercise all rights of ownership, so as not to interfere with the right of way, which exists in the public. When the owner of such soil is responsible for keeping the road in order and in good repair, he is entitled to institute a suit for damages and injunction against the destroyer of any work of improvement done to the road without proving special damage. [48] Private rights of way may arise by grant, express or implied, or by prescription. If a right of way be acquired by grant, the extent of the easement must be determined by the words of the grant. If a right of way be acquired by prescription, the character and extent of the easement is fixed and determined by the use and enjoyment under which it has been gained, the right acquired being measured by the extent of the enjoyment which is proved. The pupose for which the way may be used is limited by the actual user which has taken place during the whole period necessary for the acquisition of the right. [49] A right of way over land in every direction cannot be acquired by prescription. In order so to acquire a right of way, the passage over the land must be in a definite line or in a particular direction. [50] The dominant owner of a right of way cannot vary his line of passage

---

46. *Ponnusami Tevar* v. *The Collector of Madura*, 5 Mad. H.C.R. 6, 23 (1869).

47. *Anderson* v. *Juggodumba Dabi*, 6 C.L.R. 282, 284 (1880). See *Ranchordass Amthabhai* v. *Maniklall Gordhandass*, 17 B. 648 (1890).

48. *Maharaj Bahadur Singh* v. *Paresh Nath Singh*, 31 C. 839 (1904).

49. Kerr, *Inj.*, 6th ed. p. 254 *et. seq.*, Hilliard, *Inj.*, 641-644; Beach. *Inj.*, Ch. XXXVII, Easements Act, ss. 15, 28; Limitation Act, s. 25; *Achul Mahta* v. *Rajun Mahta*, 6C. 812 (1881). As to the acquisition of a right of way by implied grant, see *Charu Surnokar* v. *Dokouri Chunder Thakoor*, 8 C. 956 (1882); *Wutzler* v. *Sharpe*, 15 A. 270 (1893); *Ram Narain Shaha* v. *Kamala Kanta Shaha*, 26 C. 310 (1898); and cases there cited; as to covenant presumed to keep way open, see *Ranchordass Amthabhai* v. *Maniklall Gordhandass*, 17 B. 643 (1890).

50. *Doorga Churn Dhur* v. *Kally Coomer Sen*, 7 C. 145 (1881); *Radhanath Sugracharji* v. *Baidonath Seal Kabiraj*, 3 B.L.R. App. 118.

CENTRAL LIBRARY

at pleasure, even though he does not thereby impose any additional burden on the servient heritage. [51]

With reference to the English rule that a grantee is entitled to only one way of necessity and that the grantor had the right of electing it, the Bombay High Court in the case cited below, [52] which was one concerning a privy, observed as follows:—"Whether it would be right in this country to apply the first part of this ruling under all circumstances, having regard to the prejudice of the higher castes, which prevails in this country against being brought into proximity with persons whose occupation it is to remove the contents of privies, may be open to doubt."

A license to use the land of another, unless coupled with a grant, is revocable at the will of the licensor, subject to the right of the licensee to damages if revoked contrary to the terms of any express or implied contract. [53]

When a person has acquiesced in the interruption of his right of way and allowed another to erect a house on the pathway, a claim to enforce the right by the removal of the building will not be entertained. [54] A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land occupied by him as tenant over other land belonging to his landlord. [55]

[(vii) **Way—]Injunctions against obstruction of way.**—Though a plaintiff setting up a right of way must succeed not only *secundum probata* but also *secundum allegata,* a too technical view must not in this country be taken of the pleadings. [56] Whenever a claim to a right of way and its infringement has been made out, the Court will interfere by Injunction, in proper cases and where the circumstances warrant that relief, for the protection of that right. If the damage is unsubstantial and trifling, the Court may refuse to interfere by Injunction, but where a plaintiff is held to be entitled to the user of a right of way and the inconvenience caused to him is real and substantial, the court will grant an Injunction against its obstruction. [57] In the case of a public highway any appreciable obstruction is actionable but in case of a private right there must be a substantial obstruction to the easement. [58] In the undermentioned case [59] the plaintiff sued to obtain an Injunction restraining the defendants from erecting a door to a *khadki* (or small street with a door at one end and containing five or six houses on each side): from raising the level of the doorway above its original level and

---

51. Easements Act, s. 23, Explanation. A right of way of one kind does not include a right of way of any other kind: *ib.*, s. 28. As to the right to do acts to secure enjoyment such as the right of deviation or obstruction, see *ib.*, s. 24.

52. *Esubai* v. *Damodar Ishvardas,* 16 B. 552, 559 (1891): in this case it was held that having regard to the class of persons concerned there was no reasonable necessity for two ways. As to privies, see also the following cases: *Madanmahan Sen* v. *Chandra Kumar Mookerjee,* 9 B.L.R. 328 (1872); *Vishnu* v. *Rango Ganesh Purandare,* 18 B. 382 (1893); *Jadoo Lall Mullick* v. *Gopaul Chunder Mookerjee,* 13 I.A. 77 (1886).

53. *Prosonna Coomar Singha* v. *Ram Coomar Ghose,* 16 C. 640 (1889).

54. *Beni Madhub Das* v. *Ramjay Rokh,* 1 B.L.R. S.C. 213 (1868).

55. *Udit Singh* v. *Kashi Ram,* 14 A. 185 (1892).

56. *Ranchordass Amthabhai* v. *Maneklall Gordhandass,* 17 B. 648, 655, 656 (1890).

57. *G. I. P. Railway Company* v. *Nowroji Pestanji,* 10 B. 390 (1885).

58. *Petley v. Parsons,* (1914), 2 Ch. 653, and as to right of access to highway, see *Cobb* v. *Saxby* (1914) 3 K B 822.

59. *Maganlal* v. *Chhotalal,* 26 B. 136 (1901).

CENTRAL LIBRARY

from executing any building work there which might cause obstruction or difficulty to the passing of cattle, carriages, carts and fire engines through the doorway or over the land of the *khadki*. The plaint also contained a prayer for such other relief as the Court might think fit. After filing the plaint, the plaintiff applied for an *interim* Injunction pending the hearing of the suit, which, however, was refused. The defendants thereupon erected the door, and at the hearing contended that inasmuch as the plaint prayed only to prevent the erection of the door and not for its removal when erected, the plaintiff could not obtain the latter relief in the suit, but must file a fresh suit. The Lower Court dismissed the suit, holding that on the erection of the door a new and different cause of action had arisen for which a fresh suit must be filed. On appeal : *Held* (reversing the decree and remanding the case) that on the suit as framed the Court could grant a mandatory Injunction for the removal of the door. The suit was rightly framed in the light of the circumstances which existed when it was brought. It was the defendant's subsequent conduct which rendered it necessary that the plaintiff should be given, as prayed for in his plaint, such other relief as the Court might think fit.

In a case an order for restraining the defendents from obstructing a roadway which passed before the plaintiffs' and the defendants' houses and from otherwise interferring with the plaintiffs' right of way over the roadway was passed. One of the defendents alone obstructed the roadway. She was committed for contempt for breach of the order of the injunction [*Lenton* v. *Treconing*, (1960)1 All E.R. 717 (C.A.)]

A highway, which is not an easement properly so-called, may be created either by Statute or by dedication to the public by the owner of the soil of the occupation of the surface of his land for the purpose of passing and repassing. But an owner who dedicates to public use as a highway a portion of his land parts with no other right than a right of passage to the public over the land so dedicated and may exercise all other rights of ownership not inconsistent with such dedication. The dedication may be for special uses or for a limited purpose, but not to a limited class of persons or for a limited time. The soil of the highway up to the centre of the road is presumed in the absence of other evidence of ownership, to belong to the owners of the land on each side subject to the right of passage to the public. Enjoyment and user of a way by the public is evidence from which an intention to dedicate may be presumed.[60]

A class of cases in which the equitable remedy by Injunction is often sought are nuisances to public roads or highways.[61] The public as well in India as in England have the right to pass and repass along a public highway so long as they do so peaceably and properly.[61a] But speaking generally no action can in England be maintained for a public injury. Therefore an action does not lie for obstructing a man's passage in a highway, because ordinarily he has no more

---

60. *See* Kerr, *Inj.*, 6th ed. p. 274 *et seq.*, and *cf.* following decisions on highway; *Satku Valad Kadir Sausare* v. *Ibrahim Aga Valad Mirza Aga*, 2 B. 457 (1877); *Harrendro Coomar Chowdhury* v. *Taramoni Chowdhrani*, 7 C.L.R. 272 (1880); *Nihal Chand* v. *Asmat Ali Khan*, 7 A. 362 (1885); *Fatehyab Khan* v. *Muhammad Yusuf*, 9 A. 434 (1887).

61. Kerr, *Inj.*, 6th ed. p. 273 *et seq.*; *Mott* v. *Schoolbred*, 20 Eq. 24; *Atty.-Genl.* v. *Shrewsbury Bridge Co.*, 21 Ch. D. 752, and other cases there cited. A more recent decision is *Lyons* v. *Gulliver* (1914)1 Ch. 631.

61a. *See* as to this, *Harrison* v. *Duke of Rutland* (1893)1 Q.B. 142.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

damage than others of the Queen's subjects; but the party causing the obstruction must be proceeded against by indictment. If, however, the person has sustained more particular damage by the nuisance than the public in general, as if any accident occur to him, or he be obliged to go a greater distance and be thereby put to an expense in the conveyance of his goods or otherwise, then he may sue the party causing it. So where in a suit for the removal of an obstruction in a public pathway it was found by the Courts below that the plaintiffs were deprived of the only means of grazing their cattle by the obstruction and that they lost some cows thereby, it was held that the injury caused to the plaintiffs, by the obstruction of the way leading from the village where they resided to that in which they had fields and pastures, was peculiar to them and to their calling, and it caused them substantial loss of time and inconvenience; and that it was sufficient to entitle the plaintiffs to maintain the action, but it was held also that the death of the cows was too remotely and indirectly connected with the obstruction to furnish a cause of action.[62] On the others hand, in the undermentioned case,[63] the plaintiffs who were Mussulmans, sued to establish their right to carry *tabuts* in procession along a certain road to the sea, and alleged that the defendants (also Mussulmans) obstructed them in doing so. The plaint, however, did not allege any personal loss or damage to the plaintiffs, arising from the obstruction. Both the Lower Courts found, as a fact, that the road along which plaintiffs desired to carry their *tabuts* to the sea was a public road. *Held* in special appeal that plaintiffs could not maintain a civil suit in respect of such obstruction, unless they could prove some particular damage to themselves personally in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentimental gratification arising from carrying *tabuts* along a public road is not any such particular loss or injury as would be sufficient, according to English and Indian precedents, to sustain a civil action. But in a recent case where a Religious Community sued for a declaration of right to walk in procession on a particular public road to certain temples and for an Injunction against interference, it was *held* that all have a right to use a public road without interference and the suit was granted without proof of special damage.[64]

A person is not deprived of any right of private property that he may have in land used as a public road, nor does it vest the subsoil of such land in a municipality; and when such land is no longer required as a public road, the owner is entitled to claim its possession.[65]

(viii) Privacy—Injunctions to preserve privacy.—English law does not allow an easement of privacy. Nor does the law of India admit of such a right being acquired by prescription. But Illustration (*b*) to section 18 of the

---

62. *Abzul Miah* v. *Nasir Mahommed*, 22 C. 551 (1895).

63. *Satku Valad Kadir Sausare* v. *Ibrahim Aga Valad Mirza Aga*, 2 B. 457 (1877). Authorities as to what constitutes special damage sufficient to sustain a civil suit in such cases referred to. *Siddeswara* v. *Krishna*, 14 M. 177 (1890); *Ratehyab Khan* v. *Muhammad Yusuf*, 9 A. 434 (1887).

64. *Baslingappa Parappa* v. *Dharmappa Basapa* (1910) 34 B. 571, following *Sadgopa Chariar* v. *Rama Rao* (1902) 26 M. 376.

65. *Modhu Sudan Kundu* v. *Promoda Nath Roy*, 20 C. 732 (1893); and see also as to the N.W.P. and Oudh Municipalities Act: *Nihal Chand* v. *Azmat Ali Khan*, 7 A. 362 (1885).

CENTRAL LIBRARY

Easement Act shows that the Legislature intended that an easement of privacy should be acquirable by local custom and the existence of such a custom in various parts of India, as in Gujerat and the North-West Provinces and Punjab, has been recognised. [66] Where such a custom is judicially recognised and has been proved, an Injunction will be granted against a threatened invasion or infringement of the customary right.

84. Mandatory Injunctions.—Section 39 of the Specific Relief Act in express terms makes the exercise of the Court's mandatory power discretionary. [67] The law relating to the issue of mandatory Injunctions in cases of light and air was laid down, and the English and Indian authorities reviewed, in the case of *Benode Coomaree Dossee* v. *Soudaminey Dossee,* [68] by Wilson, J., who said:—

"This case so far as it relates to the granting of a mandatory Injunction, is of undoubted importance to suitors in this Court, and it seems to me that the law on the point has been somewhat misapprehended in the Court below. It rather seems to have been assumed that, if the cause of action, which undoubtedly existed, was established, a mandatory Injunction, to pull down the defendant's building, or so much of it as might be necessary, would follow as a matter of course. The principal authorities on the subject have been cited and their effect, I think, is plain.

"The cases have all fallen under one or other of two classes. The first kind of case is that of a man who has a right to light and air, which is obstructed by his neighbour's building, and who brings his suit and applies for an Injunction as soon as he can after the commencement of the building, or after it has become apparent that the intended building will interfere with his light and air; a number of cases under that head have been cited. A leading case is that of *Dent* v. *The Auction Mart Company.* [69] To the same class belong *Aynsley* v. *Glover,* [70] *Smith* v. *Smith;* [71] *Krehl* v. *Burrell;* [72] *Greenwood* v. *Hornsey.* [73] Those cases all establish that although the remedy by mandatory Injunction is always in the judicial discretion of the Court, and the circumstances of each case may be taken into consideration, still as the general rule, and in the absence of special circumstances, if the injured man comes to Court on the first opportunity, after the buildings have been commenced, or on the first opportunity, after he has seen that they will interfere with his rights, an Injunction being necessary, a mandatory Injunction is granted.

---

66. *See* cases cited in *Gokal Prasad* v. *Radho,* 10 A. 358 (1888), in which all the previous decisions are exhaustively discussed.

67. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai,* 18 B. 492 (1894). As to the form of a mandatory Injunction before the Specific Relief Act, see *Ratanji H. Bottlewalla* v. *Edalji H. Bottlewalla,* 8 Bom. H.C.R., O.C.J. 196 (1871) and as to that Act, *see s.* 55 and illustrations thereto.

68. 16 C. 252, 264-266 (1889).

69. L.R. 2 Eq. 238.

70. L.R. 18 Eq. 544.

71. L.R. 20 Eq. 500.

72. L.R. 7 Ch.D. 551.

73. L.R. 33 Ch.D. 471.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

On the other hand, however, there may be circumstances which will lead the Court to refuse the Injunction, as has certainly been done in two cases: *Senior* v. *Pawson* [74] and *Holland* v. *Worley*. [75].

The other class of cases comes under a different principle. When a plaintiff has not brought a suit or applied for an Injunction at the earliest opportunity, but has waited till the building has been finished, and then asks the Court to have it removed, a mandatory Injunction will not generally be granted, though there might be cases where it would be.

This is shown by the cases of *Isenberg* v. *The East Indian House Estate Company;* [76] *Curriers Company* v. *Corbett;* [77] *Durell* v. *Pritchard.* [78] The latter case came before the Lords Justices from a decision of the Master of the Rolls, and Turner, L.J., lays down that it is within the jurisdiction of the Court to grant a mandatory Injunction, but it ordinarily abstains from granting one unless under very special circumstances. The next case I would refer to—*City of London Brewery Company* v. *Tennant,* [79] where the jurisdiction of the Court to grant a mandatory Injunction is re-affirmed, but it is added in the judgment of Lord Selborne: 'We know, of course, that the Court is not in the habit of doing so, except under special circumstances, but those circumstances may exist.' The same law is followed in *Stanley of Alderley* v. *Shrewsbury.* [80] There have been cases where mandatory Injunctions have been granted. In *Baxter* v. *Bowen,* [81] a mandatory Injunction was granted by Vice-Chancellor Bacon, and his judgment was affirmed in appeal. [82] But in that case the circumstances were peculiar. The thing removed was a mere shed, and there was something like an agreement between the parties that no objection should be taken on the ground of complainants having delayed in bringing their action. That case has been explained as a very special case in *Gaskin* v. *Ball,* [83] where it is said: 'The Court will rarely interfere to pull down a building which has been erected without complaint. *Baxter* v. *Bowen* was a very special case, just one of those exceptions which prove the rule.' Certain circumstances have been relied on in this case as making it a special 'one particularly the notice which the plaintiff's witnesses say they gave to the defendants, not to continue the building so as to obstruct the plaintiff's rights. The learned Judge in the Court below has believed these witnesses, and I accept his finding; but the authorities show that mere notice, not followed by legal proceedings, is not sufficient. That is how matters stand, so the English authorities, and, I think, the Indian authorities are to the same effect. I had occasion to refer to the authorities in the case of the *Shamnugger Jute Factory* v. *Ram Narain Chatterjee;* [84] I only refer to that case, because on pages 200, 201,

---

74. L.R. 3 Eq. 330.
75. L.R. 26 Ch. D. 578.
76. 3 DeG. J. & S. 263.
77. Dr. & Sm. 355.
78. L.R. 1 Ch. App. 244.
79. L.R. 9 Ch. App. 212.
80. L.R. 9 Eq. 616.
81. 23 W.R. (Eng.) 334.
82. 23 W.R. (Eng.) 805.
83. L.R. 13 Ch. D. 329.
84. 14 C. 189 (1886).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

a good many of the authorities are collected. A Bombay case was cited, which, it was contended, is inconsistent with this view of the law: *Jamnadas Shankarlal* v. *Atmaram Harjivan*.[85] There, under the circumstances of the case, a mandatory Injunction was granted; but we cannot, I think, regard that case as laying down any broad rule that mandatory Injunctions are to be granted as a matter of course; but it appears to me the law on this point is well settled."[86]

Prompt action is very essential in these cases, if an Injunction is the desired remedy.[87] And it will not, in general be granted, if the plaintiff has allowed the building to be erected without complaint.[88]

Notice, that an act complained of is objected to, removes all objections to the mandatory form of the Injunction, that is, deprive the defendant of all right to complain of its particular form.[89] If such act is continued or carried on, after clear and distinct notice of objection, or, if during the action an undertaking has been given to pull down the building if so ordered at the trial, and the injury caused is of a serious nature, the jurisdiction to grant this form of Injunction will be exercised more freely than in cases where complaint is not made until after it is completed.[90]

But a plaintiff should do something more than complain, he should take steps to restrain the building; for prompt action is very essential in cases where a mandatory Injunction is the desired remedy.[91] So mere notice not to continue building so as to obstruct a plaintiff's rights, is not, when not followed by legal proceedings, a sufficiently special circumstance for granting relief by a mandatory Injunction.[92]

---

85. 2 B. 133, 138 (1877), in which case the circumstances constituting delay and acquiescence were discussed. It is for the defendant to show that the right has been lost by acquiescence; *Nandkishor Balgovan* v. *Bhagubhai Pranbhalabhdas*, 8 B. 95 (1883).

86. *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C. 252, 264-266 (1889) *per* Wilson, J.

87. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 492 (1894).

88. *Abdul Rahman* v. *Emile*, 16 A. 69, 72 (1893), v. *ante*. In *Baxter* v. *Bowen*, however, 44 L.J. N.S., Ch. 625, the building which was a mere shed was removed. *See* generally as to acquiescence and conduct, Specific Relief Act, s. 56, cls. (*h*) (*j*); *Beni Madhab Das* v. *Ramjay Rokh*, 1 B.L. R.A.C. 213 (1868). Delay may be consistent with non-acquiescence. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 133, 137 (1877); and acquiescence itself is no bar if caused by misrepresentation, *Lavies* v. *Marshall*, 10 C.B. N.S. 711, or the like. *See* Kerr, Inj., 6th ed. p. 19.

89. *Ratanji Hormasji Bottlewalla* v. *Edalji Hormasji Bottlewalla*, 8 Bom. H.C.R. 181, 196 (1871); citing *Jacomb* v. *Knight*, 32 L.J. Ch. 601; 3 D.J. & S. 538; see *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 138, 139 (1877).

90. *Jacomb* v. *Knight*, supra; *Krehl* v. *Burrell*, 7 Ch.D. 551; 11 Ch.D. 146; *Hepburn* v. *Londan*, 2 H. & M. 345; *Smith* v. *Day*, 13 Ch.D. 652; *Grand Junction Canal Co.* v. *Shugar*, 6 Ch. 489; *Greenwood* v. *Hornsey*, 33 Ch.D. 471. See *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C. 266 (1889).

91. *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, 18 B. 474, 492 (1894); *Benode Coomaree Dossee* v. *Soudaminey Dossee*, 16 C. 252 (1889).

92. *Benode Coomaree Dossee* v. *Soudaminey Dossee*, supra; *see* also *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai*, supra.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Where the defendant, upon receiving notice of motion for an Injunction, endeavoured to anticipate the action of the Court by hurrying on his building, an interlocutory mandatory Injunction was granted ordering that what he had erected ought to be at once pulled down, without regard to the ultimate result of the action. It was observed that to refuse an interlocutory Injunction, in such a case, would be to hold out an encouragement to other people to hurry on their buildings in the hope that, when they were once up, the Court might decline to order them to be pulled down. [93]

Where the defendants, after the Lower Appellate Court had passed a decree in their favour, carried up a wall complained of, notwithstanding an appeal to the High Court, the latter directed a mandatory Injunction to issue to them to remove it. [94]

The re-erection of his house by the defendant, notwithstanding notice from the plaintiff, so as to darken some of the principal rooms of the plaintiff's house, making them unfit for occupation during the day without artificial light, is an injury which cannot be adequately redressed by an award of damages, and against which the Court will grant relief by issuing a mandatory Injunction, directing the defendant to pull down so much of the house as is necessary to stop the injury. [95]

The probability of the defendant suffering a greater loss by the demolition of his house than the plaintiff, if his claim could be reduced to money, would suffer by being awarded a money-compensation, is no ground for depriving the plaintiff of a mandatory Injunction in his favour, except under special circumstances. [96]

Where the plaintiff and the defendant, being owners respectively of two adjoining houses and the verandahs immediately in front of those houses, agreed that they should keep the verandahs open and not build upon them or divide them by a wall. *Held* that the mere fact that the defendant when rebuilding his house, built its new front wall in advance of the plaintiff's thus encroaching on the defendant's own verandah in breach of the agreement was not sufficient in itself to justify the Court in granting a mandatory Injunction ordering its removal: it should also be satisfied that the new wall so materially interfered with the comfort and convenience of the plaintiff, that the consequences of the breach of agreement could not adequately be compensated by damages. It should also satisfy itself, whether the plaintiff protested against the new wall being built, whilst in course of erection, or quietly acquiesced in what the defen-

---

93. *Daniel* v. *Ferguson*, L.R. 1891, 2 Ch. 27; so also, where the defendant evaded service of the writ for several days and, in the meantime proceeded with its building till substituted service on him was effected. *Von Joel* v. *Hornsey*, L.R. (1895)2 Ch. 774. *See* also *Shelfer* v. *City of London Electric Lighting Co.*, L.R. (1895)1 Ch. 287, 322, 323, cited *ante*.

94. *Kadarbhai* v. *Rahimbhai*, 13 B. 674, 675 (1889).

95. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 133 (1877); in *Ratanji H. Bottlewalla* v. *Edalji H. Bottlewalla* (8 Bom. H.C.R., O.C.J. 181 *supra*), also notice was given protesting against the building and a mandatory Injunction was therefore granted.

96. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 133, 138, 139 (1877), such special circumstances existed in *Senior* v. *Pateson*, L.R. 3 Eq. 330.

CENTRAL LIBRARY

dant was doing, and only objected when the wall was completed. In the latter case, the Court should only award damages. [97]

An Injunction, in a case of light or air, if mandatory, should only order the demolition of so much of the servient owner's building as interferes with the access of light to which the dominant owner is entitled, and if prohibitory, should only restrain him from erecting or continuing any building, so far as it would cause such interference. [98]

To determine what demolition of a house is necessary, the Court executing the decree may be directed to employ a professional man agreed on by the parties, if they can agree, or nominated by the Court, if they cannot. [99]

An owner of land must not allow the roots and branches of his tree to penetrate his neighbour's land. A mandatory Injunction may be granted for removal of the nuisance. [1]

---

97. *Ranchod Jamnadas* v. *Lallu Haridas*, 10 Bom. H.C.R. 95 (1873).

98. *Bala* v. *Mahasu*, 20 B. 788 (1895).

99. *Jamnadas Shankarlal* v. *Atmaram Harjivan*, 2 B. 133 (1877), as to the enforcement of the Injunction v. *ante*, § 45.

1. *Bhudev* v. *Kalachand*, 34 C.L.J. 315 (1921).

CENTRAL LIBRARY

CHAPTER XI

INJUNCTIONS AGAINST INFRINGEMENT OF COPYRIGHT, TRADE-MARKS AND PATENTS

Synopsis

85. Copyright.
86. Injunctions against Infringement of copyright.
87. Trade-marks—Trade name.
88. Injunctions against Infringement of Trade-marks.
89. Patents.
90. Injunctions against Infringement of Patents.

85. Copyright.—Copyright in the sense of the sole and exclusive liberty of printing or otherwise multiplying copies of any work already published, is the creation of Statute, while what has been sometimes called "Copyright at Common Law" is really an incident of property, and not "copyright" in the strict sense. The rights of the author before publication are these:—He has the undisputed right to the MSS., he may withhold or communicate it, and communicating he may limit the number of persons to whom it is imparted, and impose such restrictions as he pleases on the use of it; and the fulfilment of the annexed conditions he may proceed to enforce and for their breach he may claim compensation. The author may prevent the publication of his work until he himself has made it public. The law gives a man who has composed the work a right to that composition just as he has a right to any other part of his personal property. This right is really an incident of property and not copyright in the strict sense. But though a man has this right, the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of for ever copying his own composition after he has published it to the world, is a totally different thing; copyright is the exclusive right of multiplying copies of a work already published and is regulated by Statute. [1]

The Preamble regulating the subject of literary copyright in India (Act XX of 1847)[2] recited that doubts might exist whether the right called copyright could be enforced by the Common Law of England in those parts of India into which the Common Law of England had been introduced, and whether the said right could be enforced by virtue of the principles of Equity and good conscience in other parts of India, and whether the Statute 5 and 6 Vic., c. 45, had made appropriate and sufficient provision for the enforcement in every part of India of the said right by proprietors thereof. The Act provided for the duration of copyright in a book published in the lifetime of its author within India. It further made provision against the suppression of books of importance,

---

1. *Jeffreys* v. *Boosey*, 4 H.L.C., 815; *Suck* v. *Priester*, 19 Q.B.D. 629.

2. Repealed partly by Act XVII of 1862; IX of 1871; XIV of 1870; XIV of 1874; XII of 1876; I of 1879; and wholly by Act III of 1914. As to jurisdiction of Courts of Small Causes under the Act, *see Hameedoollah* v. *Mahomed Ashgar*, 6 C. 499 (1880).

CENTRAL LIBRARY

the registration [3] and assignment of copyright and suits for infringement of copyright. By the English Copyright Act, 1911 1-2 Geo. 5, cl. 46) the law was amended, the former enactments relating to copyright being with few exceptions repealed. [4] Under s. 27 the Legislature of any British Possession may pass supplemental legislation modifying or adding to the provisions of the Act in its application to the Possession. The Indian Government has taken advantage of this power, and Act XX of 1847 being repealed, the now governing Indian Act is III of 1914. The Act protects not only literary work in the form of "books" as the old Act did, but also dramatic, musical and artistic copyright. [5] Registration finds no place in the new Act. Before 1911, a common law copyright in an unpublished book was constantly admitted though after publication an author had to rest his claims on the statutory right if any. [6] But s. 31 makes copyright in an unpublished as well as published work a statutory right. The Act then deals with the infringement of copyright [7] and enacts that where copyright in any work has been infringed, the owner of the copyright shall be entitled to use such civil remedies by way of injunction, damages, accounts or otherwise as are or may be conferred by law for the infringement of a right. [8]

Copyright in designs was formerly [9] regulated in India by Act V of 1888 and Act II of 1911 and now by Act XIV of 1957. Any design is applicable to any article whether the design is applicable for the patterns, or for the shape or configuration, or for the ornament thereof or for any two or more of such purposes, and by whatever means it is applicable, but does not include any trade or property mark as defined in ss. 478, 479 of the Indian Penal Code. "Copyright" means the exclusive right to apply a design to any article in any class in which the design is registered. [10] The Act provides for the registration of copyright. [11]

"There has been enormous and vast technical developments all over the world as regards recording, cenematography, power, sound, audiovision, television, broadcast etc. The international convention for the protection of literary and artistic works which was signed at Berne on 9th September 1886 was revised in Berlin in 1908, at Rome in 1928, at Brussels in 1948, at Stockholmns in 1967 and was further revised in Paris in 1971. Large number of countries have now become parties to the said convention. The countries to which the convention applies constitute a union for the protection of the rights of the authors in their literary and artistic works.

In course of time the necessity for comprehensive legislation was urgently felt both in England and in India. In India, the constitutional changes were also

---

3. *Macmillan* v. *Suresh Chunder*, 17 C. 962 (1890).
4. *See* Kerr, *Inj.*, 6th ed. Ch. IX. Copinger and Skones James *on Copyright*, 12th ed.
5. S. I.
6. Copinger and Skones James *on Copyright* (12th ed.).
7. S. 2.
8. S. 6. As to prosecutions for offences, *see* Ch. III of the Indian Act, s. 13 deals with the Courts having civil jurisdiction.
9. For the law anterior to Act V of 1888, s. 50, see *Baker* v. *Sutherland*, 3 B.L.R. 298 (1871).
10. Act XIV of 1957, s. 14.
11. *Ib*. Ch. X.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

contributed largely towards the development of the Copyright Law. In England the 1956 Act was passed on 5th of November 1956 which repealed the Copyright Act of 1911 (Except Sections 15, 34 and 37) and the Musical Copyright Act of 1902 and 1906 and the outstanding sections of the Fine Art Copyright Act 1864. The Act of 1956 came into force on the 1st of June 1957.

In India, the Copyright Act, XIV of 1957, was passed on 4th June 1957, and came into force on 21st January 1958. Drastic amendment in the Act was brought about by the Copyright (Amendment) Act, 1983 (23 of 1983), which received the assent of the President on 31st August 1983, as published in the Gazette of India, Extraordinary, Part II Section I, dated September 1, 1983; and came into force on 9th August 1984. Soon after, then, followed another major amendment, through the Copyright (Amendment) Act, 1984 (65 of 1984) which received the assent of the President on September 14, 1984, as published in the Gazette of India, Extraordinary, Part II, Section I of same date; and came into force with effect from 8th October, 1984.

As regards International Copyright, two orders were passed, namely, S.R.O. No. 271 and S.R.O. No. 272 both dated 21st January 1958.

The effect of the new Act is to afford maximum protection to authors, if they adopt the simple procedure laid down in the Act as to registration of their right. The fee for registration is nominal. The interest of the public are sufficiently protected. The setting up of a Copyright Office and Copyright Board assures full protection of all rights in relation to a work in which copyright subsists, whether of authors or of licensees or of publishers.

India, is itself, on a line with the other countries in the matter of protection of International Copyright. But the right is available only, if use is made of the symbol 'C' inside a circle" [Iyenger's *Copyright Act and Rules,* 5th ed. p. 2].

Regarding the nature of Copyright and distinction between copyright and other similar acts it will be worthwhile to quote here the neat summary given in Copinger and Skone James *on Copyright* (12th ed. para 1) which is as follows:

"Distinction between copyright and other similar rights. Copyright law is, in essence, concerned with the negative right of preventing the copying of physical material existing in the field of literature and the arts. Its object is to protect the writer and artist from the unlawful reproduction of his material. It is concerned only with the copying of physical material and not with the reproduction of ideas and it does not give a monopoly to any particular form of words or design. It is to be distinguished from the rights conferred by patent, trade mark and design legislation, which give to the registered proprietor an exclusive right to the registered material, even as against a person who has reproduced such material innocently and from an independent source. If it could be shown that two precisely similar works were in fact produced wholly independently of one another, the author of the work that was published first would have no right to restrain the publication by the other author of that author's independent and original work. A patentee, on the other hand, has the right to prevent another from using his invention if it in fact infringes the former's patent, notwithstanding that the latter's invention was the subject of independent investigation on his part. As was said by Diplock, L.J. in the case of *Francis Day & Hunter Ltd.* v. *Brom* : "the copyright work must be the source from which the infringing work was derived."

CENTRAL LIBRARY

86. Injunctions against infringement of copyright.—A person who infringes the copyright of another is liable to an action for damages or account and for an Injunction. So if *A* pirates *B's* copyright, the latter may obtain an Injunction to restrain the piracy unless the work of which copyright is claimed is libellous or obscene.[12] There may be a claim for an Injunction to restrain the future infringement of the copyright and for a mandatory order for delivery of copies which have been printed in violation of the copyright. So in the case given above, the Court may also order the copies produced by piracy to be given up and destroyed. The plaintiff must establish the right claimed and its infringement, or threatened infringement, and he must come for relief with due diligence since delay or acquiescence will be fatal to the application unless accounted for. Nor can a man have relief if his own conduct has led to the state of things that occasions the application. The doctrine applies not only to the cases of his conduct towards the particular person with whom the controversy subsists, but also to cases where his conduct with others may influence the Court in the exercise of its Equitable jurisdiction. The interference of the Court by Injunction being founded on pure Equitable principles, a man who comes to the Court must be able to show that his own conduct in the transaction has been consistent with equity: a book accordingly which is itself piratical or which is immoral, indecent, seditious or libellous, cannot be protected from invasion.[13]

Infringement of copyright has been summarised as follows: "Literary property can be invaded in three ways and in three ways only:—(*a*) Where a publisher in this country publishes an unauthorised edition of a work in which copyright exists, or where a man introduces to sell a foreign reprint of such a work, that is open piracy. (*b*) Where a man pretending to be the author of a book illegitimately appropriates the fruits of a previous author's literary labour, that is literary larceny. These are the only two modes of invasion against which the Copyright Acts have protected an author. (*c*) There is another mode which, to my mind, is wholly irrespective of any copyright legislation, and that is where a man sells a work under the name and title of another man or another man's work. That is not an invasion of copyright; it is Common Law fraud and can be redressed by Common Law remedies."[14]

If a case has been made out for an Injunction, the extent to which the Injunction ought to go (that is whether the Injunction shall be against the whole work or only against a part of it) must depend in each case upon the extent of the piracy and the nature of the work. If the pirated matter is considerable in amount and is so intermixed with the original matter that it cannot be separated, the Injunction will go against the whole work generally. If the pirated matter can be separated from the original matter, the Injunction will issue only against that particular part. If the pirated matter is not considerable in quantity or of much value in quality, or if, though considerable in value, it is very small in quantity and quite out of proportion to the mass of original matter, the Court will not, as a general rule, interfere by Injunction, but will leave the plaintiff to his remedy by damages.[15] The principle of assessing damages in all cases of

---

12. See Act 47 of 1963, s. 38, generally Kerr, *Inj.*, 6th ed. Ch. IX.
13. Kerr, *Inj.*, 6th ed. 393.
14. *Dicks* v. *Yates*, 18 Ch. D. 76, 90.
15. Kerr, *Inj.*, 6th ed. p. 395, *et seq.*

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

literary piracy is that the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's and to pay to the plaintiff the profit which he would have received from the sale of so many additional copies. [16]

It is no infringement of the copyright of a book to make *bona fide* extracts from it, or a *bona fide* abridgement of it, or to make use of the same common materials in the composition of another work, but what constitutes a *bona fide* use of a previous publication is often a matter of most embarrassing enquiry. [17]

There cannot be an interlocutory injunction if a newspaper reports current events, and translation of report made by an English Consultant to his Greek employer on the public relations programme for Europe [*Fraser* v *Evans and another*, (1969)1 All E.R. p. 8 (C.A.)].

It is not necessary that the subject-matter of a book must be perfectly new. A new arrangement of old matter will give a right to the protection afforded by the law of copyright. The plaintiff, a bookseller, in 1884, brought out a new and annotated edition of a certain well-known Sanskrit work on religious observances having for that purpose obtained the assistance of Pandits, who recast and re-arranged the work, introduced various passages from other old Sanskrit books on the same subject, and added foot-notes. In 1885 the plaintiff registered the copyright of this work. In 1886, the defendant printed and published an edition of the same work, the text of which was identical with that of the plaintiff's work, which moreover contained the same additional passages, and the same foot-notes, at the same places with many slight differences. *Held*, that the plaintiff's work was such a new arrangement of old matter as to be an original work and entitled to protection, and that as the defendants had not gone to independent sources for their material, but had pirated the plaintiff's work, they must be restrained by Injunction. *Held*, also, that an account of the net profits made by the defendants by the sale of the plaintiff's book could be ordered notwithstanding the provisions of section 12 of Act XX of 1847, as the result of the account would be to give to the plaintiff what he could have claimed as damages under that section. [18]

In a case the defence raised by the defendant to the claim for breach of copyright and breach of confidence was such that the defendant should be permitted to go ahead with publication. To justify the grant of an Interlocutory Injunction, it was not sufficient that having established a strong *prima facie* case the plaintiff owned the copyright; the plaintiff need only show that he had an arguable case with the defendant who had infringed it or was about to infringe it. Each case was to be decided on a basis of fairness, justice and commonsense in relation to the whole of the issues of fact and law relevant to the particular case. The defendent had reasonable defence to the plaintiff's claim; if those defences were valid, he was entitled to publish his book and law would not intervene to supress freedom of speech except when it was abused [*Hubbard* v *Vasper*, (1972)1 All E.R. 1023 (C.A.)].

In another case licence was granted in 1919 to Sound Track Film not then produced commercially. Question was whether the licence could be extended to Sound Motion Pictures or only to Silent Films? It was held that an injunction

---

16. *Pike* v. *Nicholas*, 2 Ch. 260.

17. *Roussac* v. *Thacker*, 1 Hyde 9, 23 (1864) : a subsequent writer may make a fair and legitimate use of a prior publication, but he may not copy or imitate it to such an extent as to damage the property of the author in his copyright.

18. *Gangavishnu Shrikisondas* v. *Moreshvar Bapuji Hegishte*, 13 B. 358 (1888).

CENTRAL LIBRARY

could properly be granted against the defendent although it was a foreign Corporation, to stop its agents from doing acts in breach to contract either in England or abroad and notwithstanding that there was no evidence before the court that the foreign Corporation had assets within the jurisdiction, for it was for the defendant to produce evidence of the persons of such assets if it wished an injunction to be refused on that ground [*The Hospital for Sick Children* v *Walt Disney Production Inc.*, (1967)1 All E.R. 1005 (C.A.)].

The plaintiffs, the partners of a firm M. & Co., were the proprietors, registered under 5 and 6 Vic., c. 45 of the copyright of a selection of songs and poems, composed by numerous well-known authors, which was prepared by one *P.* and originally published in 1861. Since original publication, the book ran through several editions, one of which was published in the year 1882. The book was registered under the provisions of the above Statute on the 8th February 1889, the name of both the publisher and proprietor being entered in the register as M. & Co., the firm's address being given, and the date of the first publication was entered as the 19th July 1861. The poems contained in the book were arranged by *P.*, not in chronological order of their production, but in gradation of feeling and subject, and at the end of the book were given some notes, critical and explanatory. On the 15th January 1889, the defendant published, at Calcutta, a book containing the same selection of poems and songs as was contained in *P's* book. The arrangement, however, of the defendant's book differed from *P.'s* in that the poems of each author were placed together and in order of their composition. In one of the poems, the defendant printed forty lines, which were contained in the work by the original author, but which were omitted by *P.*, and in another poem one line. In many places there were differences of reading in the two books, and in more of punctuation. In the defendant's book some of the titles to the poems, which had been assigned thereto by *P.* and not by the original authors, appeared, as well as a good many of *P.'s* notes, some with acknowledgement and some without. With each poem the defendant gave a mass of notes, critical and explanatory, and he also prefixed to the poems of each author a biographical notice. The suit was instituted on the 27th February 1890, and the plaintiffs complained that the publication of defendant's book constituted a breach of their copyright and prayed for the usual relief by way of Injunction and damages. They contended that although the copyright in the works of the original authors had long lapsed, they were entitled to the copyright in the "selection" made by *P.*

It was contended on behalf of the defendant that there could be no copyright in such a selection; that if any existed, the defendant's book did not infringe it; that the plaintiff's book being registered as first published in 1861 and the infringement charged being in respect of the edition of 1882, and there being no evidence to show that the same selection was contained in the latter as in the former edition, the plaintiffs were not entitled to the relief prayed for; that the author of the plaintiff's book being *P.*, in whom the copyright would *primâ facie* be, and the property being registered as in the plaintiff's firm, the registry was bad, as the assignment of the copyright to the plaintiffs was not shown; that the registration was also bad, as the entry merely contained the name and address of the plaintiff's firm; that the publication of the defendant's book having been before the date of registration, the suit would not lie, and that the suit was barred by the special limitation provided by section 26 of the Statute 5 and 6 Vic., c. 45. *Held*, that such a "selection" could be the subject-matter of copyright, the

CENTRAL LIBRARY

true principle applicable to such cases being that one person is not at liberty to use or avail himself of the labour which another has been at for the purpose of producing his work, and so take away the result of the other's labour or in other words his property. *Held,* further, that the defendant's book constituted a piracy of the plaintiffs' book, and had infringed their copyright and that they were entitled to the relief they sought. *Held,* also, that in the absence of any evidence to the contrary it was reasonable to assume that successive issues of a book of this kind under the same name are substantially the sames book: that it was unnecessary that the registry should show an assignment of the copyright by *P.* to the plaintiffs [19] and that, assuming that the rule of Limitation provided by section 26 of the Statute was applicable, the suit was not barred by Limitation. [20] The Court accordingly decreed a perpetual Injunction restraining the printing or sale of the defendant's book as being an infringement of the plaintiff's copyright. [21]

After careful consideration and elucidation of various authorities and the case law the following propositions are laid down by the Supreme Court in *R.G. Anand* v. *Delux Films* (A.I.R. 1978 S.C. 1613, para 46) as to the principle and test relating to the question whether there has been violation of Copyright :

1. There can be no copyright in an idea, subject-matter, theme, plots or historical or legendry facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

---

19. *Weldon* v. *Dicks*, L.R., 10 Ch. D. 247, followed.
20. *Hogg* v. *Scott*, L.R. 18 Eq. 444, followed.
21. *Macmillan* v. *Suresh Chunder Deb*, 17 C. 951 (1890).

CENTRAL LIBRARY

7. Where, however, the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

In *Entertaining Enterprises, Madras* v. *State of Tamil Nadu* (A.I.R. 1984 Mad. 278 at p. 290) it has been held that copyright is a bundle of rights and it is personal. Under the provisions of the Indian Copyright Act, 1914, there was no copyright in a cinematograph film as such though its various components such as story, music etc. were considered to be rights protected by the Copyright Act. It is only in the 1957 Act, the definition of Copyright was enlarged to include the exclusive right to communicate works by radio-diffusion, and a separate copyright was recognised in a cinematograph film apart from its various components namely, story, music etc. Section 2(d) of the Indian Copyright Act, 1957 defines an author in relation to a cinematograph film, as the owner of the film at the time of its completion. Section 2(f) of the said Act defines a cinematograph film as including the sound track, if any, and cinematograph is to be construed as including any work produced by any process analogous to cinematography. Though the Indian Copyright Act, 1957, was modelled on the English Copyright Act, 1956, when the English Copyright Act was amended providing for copyright in respect of television the Indian Act was not amended. But on the otherhand, it introduced Chapter VIII regarding the rights of broadcasting authorities, and Section 37 provided that "where any programme is broadcast by radio-diffusion by the Government or any other broadcasting authority, a special right to be known as "broadcast reproduction right" shall subsist in such programme." Even though the Indian Copyright Act, 1957 did not provide for any copyright in respect of shows shown on television sets as was done by the English Copyright Act, 1956, as a result of the inclusive definition of cinematograph film including any work produced by any process analogous to cinematography, the exhibition of film in a television through video tapes in which a cinematograph film is recorded will also fall within the definition of cinematograph film. As stated the 1957 Act has created a separate copyright in respect of a cinematograph film. Therefore in view of the extended definition of a cinematograph film in section 2(f) which includes any process analogous to cinematography, the video tape should also be taken to come within the definition of "cinematograph film".

In *Nav Sahitya Prakash* v. *Anand Kuamr,* (A.I.R. 1981 All 200 at 205) it has been held that a joint owner cannot, without the consent of the other joint owner, grant a licence or interest in the copyright. If a licence is granted by one of the joint owners without the consent of the other it does not by the former and the other joint owner can sue the licensee for infringement (See also Halsbury's *Laws of England,* 4th ed. vol. 9 para 859).

In *Pillalamarri Lakshmikantham* v. *Ramakrishna Pictures,* (A.I.R. 1981 A.P. 224) in a suit for infringement of copyright the publishers of a book sought relief of injunction against the producers and distributors of picture which filmed

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

the theme of the book to restrain the screening of the picture any further. The publishers also claimed damages and accounts. Injunction order was held to be appropriate but the remedies of damages and accounts are remedies in the alternative and the two reliefs were incompatible.

In *Warner Brothers Pictures Inc.* v. *Nelson,* (1936)3 All E.R. 160 it has been held that since the granting of an injunction is discretion of the court, it cannot be demanded as of right, but should be limited to what is reasonable in all the circumstances of the case.

The tendency of modern decisions is not to refuse an injunction, at the hearing of the action, merely on account of delay in instituting proceedings.

In *Harman Pictures (N.V.)* v. *Osborne,* (1967)2 All E.R. 324, the plaintiffs were owners of the film copyright in a book. The first defendant published a book which showed many differences in details and many instances of details to the sources and to the script of the screen play. There were also similarities of detail, and a marked similarity of the choice of incidents. The plaintiff alleged infringement of their copyright and sought an injunction to restrain the defendant from making or producing a film on the first defendant's screen play, and to restrain, by temporary injunction, the exhibiting, releasing or distributing of any film based on the screen play. It was held that, at this stage, the court had not to determine finally whether there had been an infringement of copyright but only whether a *prima facie* case of infringement was established. It was found that as similarities in incidents and situations are *prima facie* evidence of copying and no explanation has been but only a bare assertion has been made that the defendant has not based his script on the plaintiff's book, an interlocutory injunction could be granted to protect the plaintiff's property during the trial. The court had only to determine at that stage whether the plaintiff had made out a *prima facie* case for interlocutory injunction.

In *Donmar Production Ltd.* v. *Bart,* (1976)2 All E.R. 338, the test for injunction has been considered. The nature of the injury which the defendant, on the one hand, would suffer, if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff on the other hand might sustain if the injunction was refused and he should ultimately turn out to be right. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff.

In *K.P.M. Sundaram* v. *Rattan Prakashan Mandir,* (A.I.R. 1983 Delhi 461) the agreements in question did not assign the copyright but created only a revocable licence in favour of the defendants to publish and sell the works. But the agreements had been revoked by the plaintiff. With the termination of the agreements relating to a work which was not in existence on the date of agreements, there was a strong *prima facie* case with probability of success of the plaintiff, because the copyright *prima facie* vested in the plaintiff, and to allow the defendants to continue and publish and sell, would be an infringement of the plaintiff's right; and, therefore, in the circumstances aforesaid, the mischief is likely to follow from withholding of the injunction and it would be greater than that likely to arise from granting it. Under these circumstances, an extension of the temporary injunction, till disposal of the suit, must be held to be proper.

In *Penguin Books Ltd.* v. *India Book Distributors* (A.I.R. 1985 Delhi 29), certain books of British publication were purchased from America and were sold

CENTRAL LIBRARY

in India without licence from the British Publisher who was the exclusive licensee of such books. The sale was held to have amounted to infringement of territorial copyright. In an action for infringement of copyright damages are often not an adequate remedy since there are difficulties in both ascertaining and quantifying such damage as inquiry to the plaintiff's property, business and goodwill (Copinger and Skones James *on Copyright*, 12th ed. p. 623). The owner of the copyright or the licensee has the 'exclusive right' of printing, publishing and distributing or selling copies of the copyrighted literary production in India. Indian Book Distributors are infringing this right. Therefore Indian Book Distributors are dealers in "infringing copies". They are handling unlicensed copies. It is true that Indian Distributors are not printing these books and are not guilty of primary infringement. But when they copy of these titles for public distribution they are guilty of secondary infringement. It is also an infringement of copyright knowingly to import into India for sale or hire of those copies without the consent of the owner of the copyright though they may have been made by or with the consent of the owner of the copyright in the place where they were made. In America the subject books were lawfully published, it is true. But they cannot cross the borders of India without infringing the copyright of the exclusive licensee. The plaintiff was granted injunction.

In *R.M. Subbiah* v. *N. Sankaran Nair* (A.I.R. 1979 Mad. 56), the plaintiff claimed a copyright in the story which has been alleged to be infringed by the defendants and/or their authorised representatives by producing a picture based on the said story although under a different title. The plaintiff prayed for an injunction restraining the defendants from producing or continuing to produce any picture based on the said story. It has been held that it is a case where literary piracy is pleaded. Injunction being an equitable remedy, which is granted by a court in exercise of its judicial discretion, has to be considered from various facets which arise from a particular set of circumstances in each case. There may be cases in which the grant of an injunction temporary or permanent will only meet the ends of justice and an alternative safeguard for the preservation of the rights of the challenging party cannot at all be thought of. There may be also cases where the remedy of injunction has to be made flexible and adjustable to the situation arising in each case. A right of invocation without contemplating elasticity in the application of the rule as to the grant of injunction might sometimes result in hardship, which cannot be later cured. In the instant case, the Learned Judge has allowed the Telugu version of the picture Amar Prem to be taken; the story is said to be based on the story of *Madanotsavam* in which the plaintiffs claim a copyright. When once one reaches the stage, which is not in dispute, that the picture has been picturised on celluloid, it would not be conducive in equity or in the name of justice to keep such a completed picture in the shelves of a laboratory without the same being exploited for the benefit of both the parties in a litigation in which the only question is whether there is a copyright vested in the plaintiffs in the story of the picture. If the picture is picturised and completed in the Telugu version and is kept without being released, then it would neither benefit the plaintiffs nor the defendants. In cases where an equitable relief would be sufficiently compensated for monetarily, then courts refrain from being wooden and granting injunctions alone, instead of contemplating the nearest approximation which it can make. The mere fact that a *prima facie* case exists for the grant of an injunction or even the additional

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

intelligence that a party seeking for it would suffer irreparable harm or inconvenience by this, may not be sufficient criteria for the granting of an interim injunction. Before the court exercises its jurisdiction, to grant such an interim relief, which is essentially an equitable and a discretionary remedy, the court will have to be further satisfied that the comparative mischief or inconvenience which is likely to arise from withholding an injunction will be greater than that which is likely to arise from granting it.

In *Anton Piller K.G.* v. *Manufacturing Processes Ltd.* [(1976)1 All E.R. 779] a foreign manufacturer being the owner of the copyright in the design of a high frequency converter used to supply computers. They found that their English agents were planning to supply rival manufacturers with information belonging to the plaintiff for their own manufacture which would enable the rivals to produce a similar product. The plaintiff intended to restrain the defendants from infringing the copyright using confidential information or making copies of their machines but they were apprehensive that the defendants if get notice would take steps to destroy the documents or would send them out of the jurisdiction so that there would be none in existence by the time the action reached the stage of discovery of documents. Consequently, the plaintiff made an exparte application for an order requiring the defendants to allow the plaintiffs to enter the defendants' premises in order to inspect, remove or make copies of documents belonging to the plaintiffs. It was held that 'the interim order granted by the Trial Court was continued' this being an extreme case where there was grave danger of property being smuggled away or of vital evidence being destroyed. The Court relied on the precedent of such type of order passed by Templeman, J. in *E.M.I. Ltd.* v. *Pandit,* (1975)1 All E.R. 418 at page 424 which contained an undertaking in damages which is to be supported by a bond. It gives an interim injunction to restrain the infringement of copyright and production confidential information etc. It orders the defendants to permit one or two of the plaintiffs or one or two of their solicitors to enter defendants' premises for purpose of inspecting documents, files or things and removing those which belonging to the plaintiff. This was of course only an interim order pending the return of the summons. This type of order is now generally known as *Anton Piller order.*

In *Universal City Studios Inc.* v. *Mukhtan & Sons,* (1976)2 All E.R. 330, the plaintiff having spent and are still spending substantial sum of money on acquiring and exploiting copyright, trade mark and other rights in connection with a pictorial representation of the business relating to shirt and slogan Jaws. The defendant manufacturer of T-shirts with the said sign was alleged to have infringed the copyright of the plaintiff who instituted an action and claimed for *Anton Piller* type of order which was granted.

In *Ex parte, Island Records Ltd.,* (1978)3 All E.R. 824, *Anton Piller order* was also granted by the Court of Appeal which was refused by the Trial Court in the case of musical bootlegging. The record company's exclusive right to record and exploit the artist's performance were rights in the nature of property.

Copyright is no longer a common law right but a statutory right under section 16 of the Indian Copyright Act, 1957, which provides : that "No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of

CENTRAL LIBRARY

this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence." The said section is analogous to Section 4 of the English Copyright Act, 1956.

Infringement of copyright entitles the owner to civil remedy under section 55 of the Indian Copyright Act, 1957, which provided as follows :—

"(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may, in the circumstances, deem reasonable.

(2) Where in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The cost of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court."

Therefore from the above statutory provision a party whose copyright has been infringed can get relief from Civil Court by way of injunction whether temporary or permanent or mandatory as the case may be. The provisions of sections 36 to 42 of the Specific Relief Act would also apply in obtaining such injunction being the statutory principles governing the granting of injunction by Court. Now the principles on which the Court can be guided to grant injunction in cases of infringement of copyright have been neatly summarised with reference to recent English cases in Copinger and Skone James *on Copyright* (12th ed. paras 620 to 622). The said principles also equally applicable to India. The principles are as follows :

"**620. Remedy by injunction.**—The most important remedy for infringement of copyright, passing off and breach of confidence is an injunction. An injunction may be either interlocutory, that is one granted prior to the trial and only until after the trial or further order, or it may be final and permanent.

Applications for interlocutory injunctions are frequently made in actions for infringement of copyright, passing off and breach of confidence since damages are rarely an adequate remedy for the injury suffered by the plaintiff. The object of an interim injunction is to give to the plaintiff temporary protection against injury by continuing violation of his rights for which he cannot be adequately compensated in damages in the action. This need to protect the plaintiff must be weighed against the corresponding need of the defendant to be protected against injury resulting from his being prevented from exercising his

CENTRAL LIBRARY

legal rights and for which injury he could not be adequately compensated under the plaintiff's cross undertaking in damages. An interlocutory injunction is thus a temporary discretionary and exceptional remedy. It is available before the rights of the parties have been finally determined and, in the case of an *ex parte* injunction, even before the court has been appraised of the nature of the defendant's case. It is no part of the court's function at this early stage in the litigation to try to resolve conflicts of evidence on affidavit as to the facts on which the claims of either party may ultimately depend. The evidence is incomplete because it is not until the trial that is tested by oral cross-examination. Perfect justice cannot be achieved since the court is acting on imperfect information. It is not, therefore, appropriate for the court to decide conflicting questions of fact or difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at the trial. In brief, at the interlocutory stage the court has to make a decision when the exisetnce of the right or the violation of it or both is uncertain and will remain uncertain until final judgement is given in the action.

621. Arguable case.—At the hearing of the application for an interlocutory injunction the court must first be satisfied that the plaintiff has a real prospect of succeeding in his claim for a permanent injunction at the trial. If the court is of the view that the claim is frivolous or vexatious an injunction will not be granted. The words "frivolous" and "vexatious," in this context are understood in a somewhat different sense than the same words are when used on an application to strike out a statement of claim or a defence as being frivolous or vexatious. What the affidavit evidence must disclose is that there is a serious question to be tried and that the plaintiff has prospects of success which exist in substance and reality. The plaintiff does not, as was formerly thought, have to establish that he has a strong *prima facie* case or a *prima facie* case or even a probability that he will succeed at the trial. The burden on the plaintiff is the lesser one of showing an arguable case to be tried.

It is not, however, sufficient for the plaintiff to establish that he has an honest, though virtually hopeless, claim. It is clear that the court has no power to grant an interlocutory injunction, except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment. The injunction sought in the action must be part of the substantive relief to which the plaintiff's cause of action entitles him.

622. Decision on motion.—Although the decision in the *American Cyanamid case* had as one of its objects the shortening of applications for interlocutory injunctions, there may still be cases, particularly in the area of copyright passing off and breach of confidence, which are in effect decided on motion and where it is, accordingly, appropriate to hear full argument and give a decision on the merits. There is nothing in the decision in American Cyanamid to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give full weight to the practical realities of the situation to which the injunction will apply. On the facts, the House of Lords in *American Cyanamid* where not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the interests of the unsuccessful party to proceed

CENTRAL LIBRARY

to trial. Where the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have already been caused to the losing party by its grant or refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction, if the action had gone to trial, is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.

Furthermore, in a substantial number of cases of infringement of copyright, passing off and breach of confidence, there is no substantial dispute on the facts. All the essential facts are ascertained and in those circumstances it is permissible for the court to see whether the plaintiff has a strong *prima facie* case and whether there is a reasonably good answer. Many cases of this kind are therefore, in effect, decided on motion because the grant or refusal of the injunction is decisive of the action and disposes of the dispute."

87. Trade-mark—Trade name.—A trade-mark differs both from copyright which has already been dealt with and from a patent, the subject-matter of the following paragraph. A copyright, like a patent, relates to the substance of an article but differs in that it has reference to a literary instead of a material production. A trade-mark does not protect the substance of the article to which it is attached from being imitated, but it identifies an article and indicates the source to which that article is to be attributed. [22] The Indian Penal Code defines a trade-mark to be a mark used for denoting that goods have been made, or manufactured, by a particular person, or at a particular time or place, or that they are of a particular quality. [23] A trade-mark is a mark used to denote that goods are the manufacture or merchandise of a particular person, and any symbol, mark, name, or combination of names, marks, and the like may be used as a trade-mark.

It must not be assumed that every ornament which may be applied to the case or flask or wrapper in which goods are exposed for sale are necessarily trade-marks. Such ornaments are often employed as mere devices to arrest attention and are not intended to convey any other meaning. To constitute them trade-marks they must have been adopted as symbols devised to distinguish a particular class of goods as the goods of class manufactured or selected by a particular manufacturer or merchant. [24]

The function of the trade-marks is to give the purchaser a satisfactory assurance of the mark and quality of the article he is buying. It means the mark under which a particular individual trades and which indicates the goods to be his goods—either goods manufactured by him, or goods selected by him, or goods which in some way or other pass through his hands in the course of trade. It is a mode of designating goods as being the goods which have been, in some way or other, dealt with by the person who owns the trade-mark. [25] There may

---

22. Sebastian's *Law of Trade-Mark*, 3rd ed. p. 16.

23. S. 478; this definition has been adopted by the Indian Merchandise Marks Act, 1889 (Act IV of 1889) now repeaded by the Trade & Merchandise Marks Act, 1958 (Act 430 of 1958).

24. *Lavergne* v. *Hooper*, 8 M. 149, 153 (1884).

25. In re *Australian Wine Importers, Ld.*, 41 Ch. D. 278; Sebastian, *op. cit.*, 3.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

be a right to exclusive use of a trade-mark by traders who are importers only.[26] "The benefits derivable from the recognition of the exclusive right of a trader to his trade-mark are apparent from the consideration that the trade-mark is both a sign of the quality of the article and an assurance to the public that it is the genuine product of his manufacture. It thus often becomes of great value to him, and in its exclusive use the Court will protect him against attempts of others to pass off their products upon the public as his. This protection is afforded, not only as a matter of justice to him, but to prevent imposition on the public.' The protection of trade-marks is, therefore, beneficial to the public, since it enables them to buy with confidence that they are getting what they require; while at the same time it is beneficial to the manufacturer since it affords him the means of securing the benefit of the custom which he deserves and which is intended for him."[27]

At Common Law, until the Judicature Acts, it was necessary to prove that an injury had been actually done and intentional deception on the part of the defendant. In Equity it was enough to show that the defendant threatened to do and would, if not prevented, do that injury, and it was not necessary to prove an actual fraudulent intention, the remedy being obtainable if the defendant's conduct has been such as to produce the effects of fraud, though he may, in fact, have acted in perfect innocence.[28] It is not enough to say that there was no fraudulent intention. That is no reason why an Injunction should not be granted. Where the defendants sold goods bearing the same trade-mark as the plaintiff's merchandise, and the defendants stated that they had nothing to do with the ticket, as it had been sent them on goods from their constituent at Glasgow, and that they had telegraphed home to their constituent concerning the ticket and it was argued that no fraud has ever been intended, the Court observed:—"I do not think I had any option, if the marks, which defendants have used, are those of the plaintiffs; no matter what their intention was, a perpetual Injunction would be granted. In the meantime an interlocutory Injunction must issue. Obviously there is a close imitation. Interlocutory Injunction to issue with costs."[29]

The fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader. He cannot be allowed to use names, marks, letters and other indicia by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person. Whether the defendant has infringed the plaintiff's rights depends upon the

---

26. *Ralli* v. *Fleming*, 3C. 417 (1878); *Taylor* v. *Virasami*, 6 M. 108 (1882); Sebastian, *op. cit.* 4; *Seixo* v. *Provezende*, L.R. 1 Ch. App. 196.

27. Sebastian, *op. cit.*, citing *Manhattan Medicine Co.* v. *Wood*, 108 U.S. Rep. 218 (Amer.). To the same effect *see* observations in *Lavergne* v. *Hooper*, 8 M. 149, 153 (1884).

28. Sebastian, *op. cit.*, 9, 13; as to the origin and history of the right of action in trade-mark cases, see judgment of Mellish, L.J., in *Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 453.

29. *Graham & Co.* v. *Kerr, Dodds & Co.*, 3 B.L.R. App. 4 (1869) to the same effect see *Hugh Balfour & Co.* v. *Edward, Dundar, Kilburn & Co.*, 1 Hyde 270 (1863); (following *Millington* v. *Fox*, 3 My. & Cr. 33); *Ewing & Co.* v. *Grant, Smith & Co.*, 2 Hyde 185 (1864). See, *Mangalore Ganesh Beedi Works* v. *Free India Beedi Works*, A.I.R. 1951 Mys. 29; *National Sewing Thread Co.* v. *James Chadwick & Bros.*, A.I.R. 1953 S.C. 357.

CENTRAL LIBRARY

question how far the defendant's trade-mark has such a resemblance to that of the plaintiffs as to be calculated to mislead incautious purchasers.[30] And when a trade-mark is obviously apt to mislead a purchaser, evidence of intent to deceive is inadmissible because it is unnecessary.[31]

The general principle upon which the Courts exercise jurisdiction in the case of trade-marks has been stated to be that "a manufacturer who produces an article of merchandise which he announces as one of public utility, and who places upon it a mark by which it is distinguished from all other articles of a similar kind, with the intention that it may be known to be of his manufacture, becomes the exclusive owner of that which is henceforth called his trade-mark. By the law of this country, and the like law prevails in most other civilized countries, he obtains a property in the mark which he so affixes to his goods. The property thus acquired by the manufacturer, like all other property, is under the protection of the law, and for the invasion of the right of the owner of such property, the law affords a remedy similar in all respects to that by which the possession and enjoyment of all property is secured to the owners."[32] In *Corn Products Refining Co.* v. *Shangrila Food Products Ltd.*[33] it has been held that the question of similarity of two trade marks has to be decided on a comparison of the marks as a whole. The approach must be from the point of view of average intelligence and of imperfect recollection.

The Common Law remedy was by an action on the case for damages caused by the offender's fraud, in which action it was necessary to show that the plaintiff had been accustomed to use a certain mark upon goods of his manufacture to denote that that was so, that that mark was known in the trade, and that the defendant had imitated the mark and sold goods bearing it, as and for the plaintiff's goods, with intent to defraud; the Equitable remedy was by Injunction, together with an account, or damages, if preferred.

The law as to trade-marks is now regulated in England by Statute[33a] which is not the case in this country save as to Criminal proceedings under the Indian Merchandise Marks Act.[34] There was no registration of trade-marks in India as in England. There being no acquisition by registration in this country, in order to establish a claim to trade-mark, it must be shown that the mark has been applied by the plaintiff properly, that is to say, that he has not copied any other person's mark and that the mark does not involve any false representation, and that the article so marked is actually a vendible article in the market. For no property in a trade-mark can be acquired except through the process of sale, or offering for sale in the market of the article to which the trade mark is affixed.

---

30. *Badische Aniline & Soda Fabrik* v. *Maneckji Shapurji Katrak*, 17 B. 584, 593, 594 (1893).

31. *Jawala Prasad* v. *Munna Lal Serowjee*, 37 C. 204 (1909), following *Saxlehner* v. *Appolinaris Co.* (1897), 1 Ch. 893 and *Reddaway* v. *Banham* (1896), 1 A.-C. 199.

32. *Ransome* v. *Graham*, 51 L.J., Ch. 897, *per* Bacon, V.C. See *Goodfellow* v. *Prince*, 35 Ch. D. 13.

33. A.I.R. 1960 S.C. 142.

33a. See 46 & 47 Vic. c. 57.

34. Act IV of 1889 as amended by Act IX of 1891; Trade and Merchandise Marks Act, 1958.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Such possession and use of a trade-mark in one market as to constitute a right in it, establishes in the owner thereof an exclusive right to that trade-mark in other markets, although the owner may not have used it in such markets.[35] A right to use a trade-mark may be created by license or assignment. There is no length of time required for the acquisition of a right to a trade-mark. As it may be acquired it may be abandoned, and no length of time is required to constitute an abandonment.[36] The question of such abandoment is one of intention which is to be inferred from the facts.[37]

The principle which applies to the case of a man selling his goods as the goods of another applies to the case of a man using the trade-name of another for the purpose of reaping the benefit of the reputation which the other has already acquired in the market. In imitations of trade-names used as such and not as trade-marks of goods, there is a difference from trade-marks proper: there is a false representation, but it is a representation not that certain goods are certain other goods, but that a certain establishment is a certain other establishment. the object being that the one establishment should obtain custom intended for the other. Such cases are not cases of trade-mark, not being concerned with marks placed on vendible articles in the market, but still the Court has to proceed upon much the same lines. The same principle which apply to the right to use a name are also applicable to the use of a trade-name or partnership, form or style. *

Where a name or word was originally or has become, descriptive of an article, it cannot be protected as a trade-name. A trade-name may, however, be so appropriated by user as to come to mean the goods of the plaintiffs, though it is not and never was impressed on the goods or packages so as to be a trade-mark. Where it is established that such a trade-name bears that meaning, the use of that name or one so nearly resembling it as to be likely to deceive, as applicable to goods not the plaintiff's may be the means of passing off their goods as and for the plaintiffs, just as much as the use of a trade-mark: and the law, so far as not altered by legislation, is the same.[38] So it was held that inasmuch as the term "Oriental" had become identified with the plaintiff company an Injunction should issue restraining the defendant company from using the term "Oriental" in its name as such user would be likely to deceive the public and the defendant company would be a source of danger to, and would be liable to cause damage to the plaintiff company.[39] Similarly a person who

---

35. *Lavergne* v. *Hooper*, 8 M. 149 (1884).

36. *Ib*. 154.

37. *West End Watch Company* v. *Berna Watch Company* (1910)35 B. 425; referring to *Damodar Ruttonsey* v. *Hormasji Adarji*, appeal 492 in suit No. 69 of 1895; and following *Lavergne* v. *Hooper* (supra) and *Mouson* v. *Boehm* (1884), 26 Ch. D. 398.

* Sebastian, *op. cit.*, 18 See also *Tussaud* v. *Tussaud*, 44 Ch. D. 678.

38. *Singer Manufacturing Co.* v. *Loog*, *L.R.* 8 App. Gas. 32. See *Reddaway* v. *Schroder*, *Smidt & Co.*, 8 C.W.N. 151 (1903), S.C. in appeal, 6 C.W.N. 281 (1905); *National Bank India* v. *National Bank Indore*, 24 Bom. L.R. 1181 (1922), and cases there cited. As to fancy name, see *Upendranath Brahmachari* v. *Union Drug Co.*, 43 C.L.J. 405 (1926).

39. *Oriental Government Security Co.* v. *Oriental Assurance Co.*, 40 C. 570 (1913) where it was also held that the circumstance that the field of operation of the defendant Company was in the Orient did not entitle it to the use of the term "Oriental."

CENTRAL LIBRARY

sells goods made up and packed in such a way as is likely to deceive may be restrained. [40]

88. Injunctions against infringement of trade-marks.—A trade-mark being property, an Injunction will be granted when the defendant invades or threatens to invade the plaintiff's right to or enjoyment of that property. So if *A* improperly uses the trade-mark of *B*, the latter may obtain an Injunction to restrain the user, provided that *B's* use of the trade-mark is honest. [41] Mention has already been made of the acquisition, and proof of, title to trade-marks; as to what degree of resemblance is necessary to constitute the fraudulent or colourable imitation of a trade-mark, it is impossible to lay down any general rule. In each case as it occurs it must be ascertained whether there is such a resemblance as that ordinary purchasers purchasing with ordinary caution are likely to be misled. [42] The same considerations of policy which prior to the regulation of trade-marks by Statute induced the English Courts to protect them, and to recognise in a manufacturer or selector a right under certain limitations to the distinguishing mark or title under which he offered his goods to the public, and to mulct in damages any other person who intentionally infringed a trade-mark so adopted, have induced the Courts in this Country to accept as consonant with equity and justice the general rules which obtained in commercial countries respecting trade-marks. Of course the Courts in India would only recognise the particular provisions of the Statute law of other countries in so far as may be necessary for the determination of rights which have been acquired under such provisions, unless indeed by the law of England or India they are directed to do so. [43] Though the principles of English law are generally applicable, it must not be supposed that cases in this country are always to be decided on the same principles as those which are followed in England. [44]

The ground upon which a person is restrained from using another's trade-mark is, that he is gaining an advantage by the use of a particular trade-mark, which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient, if the Court be satisfied, that the resemblance is such as would be likely to cause the one mark to be mistaken for the other. [45]

"No trader can complain against a rival trader in regard to any announcement he makes concerning the goods which he sells, so long as no statement is made which is untrue, or calculated to mislead. But besides making use of ordinary language and their own names, in order to announce to the public what they wish to make known with respect to their goods, traders are in the habit of resorting to a variety of devices in order to catch the eye of the public, and to represent to them in a striking manner what they wish to announce. Sometimes

---

40. *Chatarpal Sharam* v. *Jagganath Das*, 44 A. 608 (1922).

41. See *Archibald Orr Ewing* v. *Chooneeloll Mullick*, Coryton, 150 (1865); and generally Kerr, *Inj.*, 6th ed. p. 394, 5th ed. 375 *et seq.* Halsbury's *Laws of England*, (4th ed.), Vol. 24, paras 986, 1026; as to interlocutory Injunctions in particular, see Sebastian, *op. cit.*, 191, 192.

42. *See* Kerr, *Inj.*, 6th ed. 381 *et seq.*

43. *Lavergne* v. *Hooper*, 8 M. 152, 153 (1884).

44. *Hugh Balfour & Co.* v. *Edward, Dundar, Kilburn & Co.*, 1 Hyde 270 (1863).

45. *Ewing & Co.* v. *Grant, Smith & Co.*, 2 Hyde 185 (1864); *see* report of case in Hyde 1 (1863).

CENTRAL LIBRARY

they wrap their goods in a fanciful cover, sometimes they impress upon their goods a fanciful name, at other times a fanciful plant or animal; and when a trader specially selects and appropriates to himself for the purpose of distinguishing his goods a device of this kind, that device becomes his trade-mark proper, and no one else is allowed to use it. But if, without any such special selection and appropriation, the goods of the trader do in fact happen to bear some particular mark, and this mark has come to be associated by the public with this trader's name, so that all goods bearing that mark are supposed to come from him, then also the law will not allow any person to use a mark of this latter description, any more than it will allow him to use a rival trader's trade-mark proper, and for this reason, because in either case there is made, or there is assumed to be made, a representation to the public which is false, namely, that the goods which are the goods of one trader are the goods of another. But this distinction has been drawn between these two cases. If it be shown that a trader, has infringed a rival trader's trade-mark proper, that is to say, the mark which another trader has specially selected and appropriated for the purpose of distinguishing his goods, the Court will, without further evidence, at once interfere, taking it for granted that such a proceeding is calculated to deceive the public; whereas, if the mark be one which has not been specially selected and appropriated by the trader for this purpose, evidence must be given to show that the mark was so understood by the public as to make it clear that the proceeding had either deceived, or was at least calculated to deceive, the public. Marks of both these kinds are usually called trade-marks, and the distinction between the two cases is not one of principle, but it is one which is convenient when examining the evidence by which it is sought to prove the infringement." [46]

"The general principles on which the Court gives relief in cases of trade-mark are to be found in *Perry* v. *Truefitt*, [47] *Croft* v. *Day*, [48] *Leather Cloth Company* v. *American Leather Cloth Company*. [49] These principles are applied to different classes of cases—*firstly*, to those of imitation of the entire trade-marks, about which no question could exist; *secondly*, to imitation so nearly resembling the entire original as to be colourable though not fraudulently so [*Millington* v. *Fox*:[50] of which *Croft* v. *Day* [51] is an example]; *thirdly*, to a class of cases where the entire original was not very closely copied, as discussed in *Leather Cloth Company* v. *American Leather Cloth Company* [52] ..... Then there are cases governed by the subordinate principle enunciated by Lord Cranworth in *Seixo* v. *Provezende*, [53] viz:

'I do not consider the actual physical resemblance of the two marks to be the sole question for consideration. If the goods of a manufacturer (an importer I hold to be the same) have, from the mark or device he has used, become known in the market by a particular name, I think that the adoption by a rival

---

46. *Ralli* v. *Fleming*, 3 C. 430, 431 (1878); see *Barlow* v. *Gobindram*, 24 C. 374 (1897).
47. 6 Beav. 66.
48. 7 Beav. 84.
49. 11 H.L. 538.
50. 3 M. & C. 338.
51. 7 Beav. 84.
52. 11 H.L. 538.
53. L.R. 1 Ch. App. 196.

CENTRAL LIBRARY

trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as the actual copy of his device.' This principle is recognized in *Ralli* v. *Fleming*,[54] *Orr Ewing & Co.* v. *Johnston & Co.*,[55] *Ford* v. *Foote*,[56] *Edlesten* v. *Edlesten*,[57] *Kinahan* v. *Bolton*,[58] *Braham* v. *Bustard*,[59] *Worther spoon* v. *Currie*.[60] In *Cope* v. *Evans*,[61] where the question was to the use by defendant of the word 'Prairice' on cigar boxes, which word plaintiff had used in conjunction with other words, none of the principles above referred to were disputed, but were admitted by Sir Charles Hall, V.C. On the evidence he held that the use df the word 'Prairie' was not calculated to cause defendant's tobacco to bear the same name as the plaintiff's tobacco, or to cause defendant's tobacco to be passed off as plaintiffs."[62] No trader importing goods can lawfully adopt a trade-mark which is calculated to cause his goods to bear in the market the same name as those of a rival trader.[63]

The question of the right to the exclusive user of a trade-mark or trade-number is largely, if not entirely a question of fact, and the question whether it exists in any given case must depend upon whether the evidence in that case is sufficient to show such an association or connection between the mark or the number and the firm which uses it, as to indicate to the ordinary purchasers in the market that the goods are the goods of that particular firm. To show that a particular trade-number has acquired a reputation in the market, and that purchasers buy the goods by that number and not from an examination of the nature or quality of the cloth, is not sufficient to establish the right of exclusive user of that number. There must be such an association between the number and the firm's name as to indicate in the understanding of the public that the goods bearing that number came from that particular firm. The right of exclusive user of a name or a number as a trade-mark is not an absolute and unqualified right which would entitle the owner to prevent another person from using it under all circumstances. It is only when the use of that name or number deceives or is reasonably likely to deceive the public that it can be interfered with or prevented. There must be a reasonable probability of purchasers being deceived, it is not enough to show a mere possibility of deception.[64]

In the undermentioned case[65] the plaintiffs from 1872 imported and sold an article described as 7½ lbs. grey shirtings and marked as follows: "In the centre of each piece of cloth is a stamp in blue colour of a turtle in a star with the words 'trade-mark; immediately underneath, in a semi-circular form, is the name 'Fleming, Galbraith & Co., Manchester,' and under this the number 39 within a star, and at the bottom of each piece the number 2008." In 1877 the

---

54. 3 C. 417 (1878).
55. L.R. 13 Ch.D. 434, subsequently confirmed on appeal, L.R. 7 App. Ca. 219.
56. L.R. 7 Ch. App. 611.
57. DeG. J. & S. 185.
58. 15 Ir. Chanc. Rep. 75.
59. 1 H. & M. 447.
60. L.R. 5 H.L. 508.
61. L.R. 18 Eq 138.
62. *Taylor* v. *Virasami*, 6 M. 110, 111 (1882).
63. *Ib*.
64. *Barlow* v. *Gobindram*, 24 C. 364 (1897).
65. *Ralli* v. *Fleming*, 3 C. 417 (1878).

CENTRAL LIBRARY

plaintiffs discovered that the defendants were importing from the same manufacturers, and selling cloth of a similar quality marked as follows: "A stamp in blue colour of a rose in a square; underneath are the words 'Ralli and Mavrojani' arranged in a semi-circular form, and under this the number 39 in a star and at the bottom the number 2008." On the facts of the case the lower Court (Macpherson, J.) granted an *interim* Injunction to restrain the defendants from so marking their cloth, on the ground that it was a colourable imitation of the plaintiffs' mark and calculated to mislead the public; and on appeal the Court (Garth, C.J., and Markby, J.) upheld that decision so far as to continue the Injunction. *Held per* Garth, C.J.: If the imitation of the plaintiff's marks generally, or the use of the number 2008 in particular, would be calculated to deceive or mislead the public, the defendants ought to be restrained from such use or imitation. Under the circumstances the use of their marks by the defendants would be calculated to deceive the public into the belief that they were purchasing goods imported by the plaintiffs. *Per* Markby, J.: The number 2008 was not part of the plaintiffs' trade-mark proper, nor on the evidence was it so associated with the plaintiff's name as to indicate to the public that the goods bearing that number came only from the plaintiffs' firm as importers. On the evidence it was merely a quality mark, and therefore not calculated to mislead the public into the belief that they were purchasing the plaintiffs' goods, while in fact they were purchasing those imported by the defendants.

In the undermentioned case [66] the plaintiffs sued the defendant for an infringement of their label used on tins of aniline dye, which they imported into Bombay. The label covered the top of the tin, and bore upon it the picture of an elephant in the centre of a curved band: the rest of the label being a combination in green, red and gold, representations, for the most part, of coins, medals and tracing. The defendant was the agent in Bombay of Cassella & Co., of Frankfort. Prior to 1892 Cassella & Co. had imported analine dye into Bambay in tins bearing a label, the chief feature of which was an elephant. Of that label, however, the plaintiffs did not complain. But in January, 1892, Cassella & Co. adopted a new label, also bearing the picture of an elephant, different in some respects from the picture on the plaintiff's label and with new surroundings, to none of which taken separately, did the plaintiffs object, but they complained that in its general effect this new label was so similar to their trade-mark as to amount to a colourable imitation thereof, and to be likely to deceive purchasers. It was held that the plaintiffs were entitled to an Injunction against the defendant. It was also held by Sargent, C.J., who referred to the remarks of Lord Selborne in *Johnstone* v. *Orr Ewing*: [67]—That the question in a case of this description is not what would be the effect on brokers or even dealers in Bombay, but how the label would be likely to strike incautious or unwary purchasers, such as are to be found more particularly in the Mofussil, that the attention of such purchasers would be arrested by the general effect of the label, and that, notwithstanding such differences as undoubtedly existed in respect to the colour and size of the elephant and in some other respects, they would regard the labels as symbolical of the plaintiff's goods. It was also held by Starling, J., that it is quite possible for a label, no part of which is a copy of another label, to be a colourable imitation of that other label, and to be so like it in general appearance as to be

---

66. *Badische Aniline and Soda Fabrik* v. *Maneckji Shapurji Katrak*, 17 B. 584 (1893).
67. 7 App. Cas. 219.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

likely to deceive purchasers. In the undermentioned case it was held that evidence that a flower had been used as a trade-mark was sufficient for an application for an Injunction against the use of a particular kind of flower as a trade-mark for similar goods, but that the Injunction could be varied in accordance with facts established in evidence. [68]

The Court in dealing with a motion for a temporary Injunction will endeavour as much as possible to avoid prejudicing the defendant's case at the hearing of the cause when the Court may probably be supplied with fuller materials than it has upon the motion for ascertaining the truth. [69]

The interference of the Court by Injunction being founded upon purely equitable principles, no Injunction will be granted when the conduct of the applicant or his agent has been such as to disentitle him to the assistance of the Court. [70] So a plaintiff who in other respects would be eititled to obtain a remedy against an infringer may yet be deprived of his right by reason of some fraudulent statement contained in his own trade-mark. [71] Again, delay and acquiescence may deprive a man of his right to the protection of the Court. [72] Inasmuch as however in a case where no proof of actual deception is produced, the Court has to try a hypothetical case, turning on the probabilities of deception as to which witnesses could probably be brought forward by both sides—a person who believes others to be infringing his trade-mark is entitled to wait until he can collect a sufficient number of cases to prove to the Court that the proceedings of which he complains do actually deceive the public. [73] Even if the delay has not been such as to disentitle the plaintiff to his Injunction, it may yet obtain indulgence for the defendants, or the account or damages may be withheld, or the plaintiff may be left to pay his own costs. [74]

The owner of a trade-mark may be, in respect of that mark as in respect of any right, estopped by his conduct from denying the title of another person. where the plaintiffs by their conduct led the defendant to believe that they claimed no right to a certain trade-mark, and that it was open to the defendant to adopt it as his own, and the defendant did adopt, it, and by his industry secured a wide popularity for it in the Indian market, it was *held* that the plaintiffs were estopped from denying the defendant's right to use the trade-mark in the Indian market. [75]

An action for an Injunction may be brought against an agent, or a vendor who is not the manufacturer [76], or against a person employed in effecting only a part of the transaction, such as a person employed to engrave or print spurious labels or marks, or against an innocent person, such as carrier, shipowner, wharfinger who may have temporary possession of the articles impressed with a

---

68. *Jawala Prasad* v. *Munna Lal Serowgee*, 37 C. 204 (1909).
69. *Ralli* v. *Fleming*, 3 C. 422, 423 (1878).
70. Act 47 of 1963, s. 41(i).
71. See *Perry* v. *Truefitt*, 6 Beav. 66; *Pidding* v. *How*, 8 Sim. 477; and other cases cited in Sebastian, *op. cit.* 228.
72. See cases cited in Sebastian *op cit.* 222.
73. *Lee* v. *Haley*, L.R. 5 Ch. 155, 160.
74. Sebastian, *op. cit.* 227, 228; and generally as to costs.
75. *Lavergne* v. *Hooper*, 8 M. 149 (1884).
76. *Jawala Prasad* v. *Munna Lal Serowgee*, 37 C. 201 (1909).

CENTRAL LIBRARY

spurious trade-mark; and a person who at the desire of another imposes upon goods a trade-mark which belongs to a third party may be made a party to the action along with his principal.

89. **Patents.**—A trade-mark differs from a patent in many respects. "In the former case the article sold is open to the whole world to manufacture, and the only right the plaintiff seeks is that of being able to say, 'Don't sell any goods under my mark.' He may find his customers fall off in consequence of the defendant's manufacture; but it does not necessarily follow that the plaintiff can claim damages for every article manufactured by the defendant, even though it be under that mark. On the other hand, every sale without licence of a patented article must be a damage to the patentee." [77] In the case of a trade-mark "the property and right to protection is in the device or symbol which is invented and adopted to designate the goods to be sold and not in the article which is manufactured and sold." [78]

The benefit conferred upon the public by the communication of a new invention, which after a limited period all can use, is the consideration in respect of which a monopoly of the invention is granted to the inventor for that limited period. [79]

The law of India relating to inventions is now contained in the Patents Act, 1970 (Act 39 of 1970). As regards the Procedure for obtaining an exclusive privilege, it was altogether different from the English Procedure. On petition and leave given to file a specification, and on the specification being filed within the prescribed period, the exclusive privilege sprang into existence by mere operation of law, provided, of course, that the claim was well founded in substance—a matter of which the claimant, as in England, took the risk. Though during the period, exceeding a quarter of the century, for which the Act of 1859 was in operation, it worked on the whole satisfactorily, difficulties from time to time arose, and the increasing resort to the Act in and prior to the year 1887 brought them into greater prominence. Though these difficulties were not of such a kind as to require in the opinion of Government any alteration which would affect the main principles of the Act, still as their removal was very desirable, it was decided to pass Act V of 1888 and to incorporate in it certain provisions suggested by the Patents, Designs, and Trade-marks Act, 1883, which was then the law in England. [80] This Act was repealed by Act II of 1911 which was subsequently repealed by Act 39 of 1970 and it is the present governing Act.

---

77. *Davenport*, v. *Rylands*, L. R. 1 Eq. 302, *per* Wood, V.C.

78. Sebastian on Trade-marks, citing *Godillot* v. *Hazard*, 49 How. Pr. 5 (Amer.).

79. *Cheavin* v. *Walker*, 5 Ch. D. 850, 863.

80. Statements of Objects and Reasons, Inventions and Designs Bill, *Gazette of India*, Jan. 8, 1887, Part V p. 15. See also *Gazette of India*, Feb. 18, 1888, Part V p. 3. See the following decisions passed under that Act: *Kinmond* v. *Jackson*, 1 C.L.R. 66 (1877); [Improvement—Useful invention—novelty—piracy-patent combination—Injunction, account of profits—damages—Limitation]; S. C. 3 C. 17 (1877) [Limitation]: *Sheen* v. *Johnson*, 2 A. 368 (1879) [License—measure of damages—"publicly or actually used"—particulars]: *Petman* v. *Bull*, 5 A. 371 (1883) [Jurisdiction—particulars]. *Ledgard* v. *Bull*, 9 A. 191 (1886) [Jurisdiction—particulars]. In the matter of *D.H.R. Moses*, 15 C. 244 (1888) [License].

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

An invention includes any new and useful improvement.[81] The inventor of a new manufacture may apply for leave to file a specification thereof.[82] The object of a specification is to prevent a patent being granted for known things and to secure to the public the benefit of the invention after the expiration of the time fixed for the duration of the monopoly. Upon such application and after such enquiry as is necessary an order granting and sealing a patent may be made authorising the applicant to file a specification of the invention. A patent confers on the patentee the exclusive privilege of making, selling and using the invention in India, and of authorising others so to do. A person is not entitled to an exclusive privilege if the invention is of no utility, or is not new, or the applicant is not the inventor, or if the specification is not in order, or if his application contains a wilful or fraudulent mis-statement.

Under Section 27 of the Trade & Merchandise Marks Act, 1958 it has been provided that no person shall be entitled to institute any proceedings to prevent or to recover any damages for an infringement of an unregistered trade mark.

Under the said provisions the plaintiff in an action for infringement must establish his title as a registered user entitled to bring the action. Thereafter he must establish and prove that the defendant has acted or threatened to act in such a way as to infringe the right conferred by registration as defined under the Act. The plaintiff's title as proprietor depends on the existence of a valid registration. If the registration is not admitted it must be provided by production of a certificate issued by the Registrar which is prima facie proof of registration (See Section 31 of the Trade & Merchandise Marks Act, 1958). A suit may be filed before the Registration of the mark provided the registration has been applied for since the registration relates back to the date of application. An assignee may commence an action for infringement without registration of the assignment. But a perpetual injunction to restrain infringement will not be issued if the plaintiff is not on the register (Kerly's *Law of Trade Marks and Trade Names*, 10th ed. para 15-05). It is not necessary to give notice to the alleged infringement before any suit is filed against him but it is a bad practice to sue without warning in the absence of some special reason for doing so and moreover there may be a risk when an action is commenced without warning especially against a mere retailer. The defendants in such case may satisfy the Court that the infringement was inadvertant and there is no reason for apprehending any repetition (Kerly's on *Trade Marks and Trade Names*, 10th ed. para 15-14). As the action for infringement of trade mark is one of torts and consequently every infringer is liable to be sued whether he has acted on his own or as an agent of a principal or as an employer or a servant or a Director and promoter. These general principles are applicable in case of infringement of Patent and Copyright and also to trade mark according to the provisions of Sections 36 to 42 of the Specific Relief Act.

In *Parle Products (P) Ltd.* v. *J. P. & Co., Mysore* (A.I.R. 1972 S.C. 1359) the question was whether the plaintiffs' right to a trade mark was infringed in a particular case. It has been held that the approach must not be that in an action for passing off goods of the defendant as and for those of the plaintiff. The

---

81. Act 39 of 1970, s. 2(j).
82. Ib. ss. 6-11.
83. Kerly's *Law of Trade Marks and Trade Names*, 10th ed.

CENTRAL LIBRARY

Supreme Court in *Durga Dutt* v. *Navratna Pharmaceutical Laboratories* [(1965)1 S.C.R. 737 at p. 754: A.I.R. 1965 S.C. 980] has said:

"While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods (vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the *sine qua non* in the case of an action for infringement."

In the above case the Court has further pointed out:

"In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the Court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff."

It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impunged mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In that case the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; ;the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The words "Gluco Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone who has a look at one of the packets one day may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, he might easily mistake the defendants' wrapper for the plaintiffs' if shown to him sometime after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. Each case, however, will have to be judged on its own features and it would be of no use to note in how many points there was similarity and in how many others there was absence of it.

CENTRAL LIBRARY

In *Century Traders* v. *Roshanlal Duggar & Co.* (A.I.R. 1978 Delhi 250) it has been held that the registration of the mark or similar mark prior to point of time to user by the plaintiff is irrelevant in an action for passing off and the mere presence of the mark in the register maintained by the Trade mark registry does not prove its user by the presence in whose name the mark is registered and is irrelevant for the purpose of deciding the application for interim injunction unless evidence has been laid or available for user of their registered trade mark. Proof of actual damage or fraud is unnecessary in a passing off action whether the relief asked for is injunction alone or injunction, accounts and damages. If there is a likelihood of the offending trade mark invading the proprietary right, a case of injunction is made out. The said principle is laid down also in *Kishan Industries* v. *Punjab Food Corporation* (A.I.R. 1983 Delhi 387). The principles on which grant of injunction in case of infringement of trade mark in England are made are also applicable to India in appropriate cases as the Trade and Marchandise Mark Act, 1958 is modelled after the English Trade Marks Act, 1938. The said principles is neatly summarised in Kerly's *Law of Trade Marks and Trade Names*, 10th ed. para. 15.59 as follows:

"Further infringement must be threatened or be likely to occur—The grant of an injunction in trade mark cases is governed by the general rules applicable where other rights are concerned. There must be some threat or probability that the infringement will be commenced, continued, or repeated, or the court will not interfere. If an actual infringement is shown to have occurred, that is usually sufficient and the plaintiff is not bound to wait until it has been frequently repeated, or until warning has been given and been disregarded for the 'life of a trade mark depends upon the promptitude with which it is vindicated.'

1. It was held that the plaintiffs were entitled to an injunction and costs though the evidence showed that the sale was due to mistake, but the defendant had refused to make any apology or offer any undertaking.

2. Infringement was by mistake and there was no apparent probability of the defendants repeating it. No injunction was granted but (the defendants having denied the infringement) the plaintiffs were granted a declaration: the order reciting that in the opinion of the court the acts complained of were inadvertent.

If the action is commenced before any undertaking has been given, a subsequent offer or even an undertaking out of court will not usually be sufficient unless an undertaking is offered in the defence. Thus, an injunction has been granted here the defendant had altered the device and discontinued the use of the labels complained of, and offered to undertake not to use any more of them, although in some instances, the undertaking of an innocent infringer had been accepted by the court. If an offer is made on motion for an interlocutory injunction, the fact that the offer was made should be recited in the order on the motion, and if the defendant wishes to adhere to the offer, it should be repeated in the defence. Where the defendant makes an offer in the defence to give an undertaking or submit to an injunction, the plaintiff is entitled to move the court for an order embodying the offer, and to the costs even if the costs are not offered, and the relief offered is much less than was claimed. It is not necessary that any actual infringement should have occurred if it is proved that the defendant contemplates committing or has threatened to commit one, and it

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

is sufficient evidence of this that he is in possession of a considerable quantity of spuriously marked goods, even though it is only as a forwarding agent." And the form of injunction to be issued by Court is given in para 15.62 [83] and regarding the form of interlocutory application for an interim injunction is in para 15.64. [83] In paras 15.66 to 15.68 [83] the principles are also elaborated with regard to refusal of interim injunction on account of delay, and enforcement of injunction.

90. Injunctions against infringement of Patents.—An inventor may institute a suit in the District Court against any person who, during the continuance of an exclusive privilege acquired by him under this Act in respect of an invention makes, sells, or uses the invention without his license, or counterfeits or imitates it. In such a suit for infringement of patent, the plaintiff may claim an Injunction and either an account of profits or damages. So if *A* infringes *B's* patent, if the Court is satisfied that the patent is valid and has been infringed. *B* may obtain an Injunction to restrain the infringement. [84]

In *Monsanto Company* v. *Coramondal Indag Products (P) Ltd.* [AIR 1986 SC 712 (1986) 1 SCC 642] it has been held that a product is publicly known within the meaning of clauses (e) & (f) of Section 64(1) of the Patent Act 1970 if it is known to persons who are engaged in the pursuit of knowledge of the patented products or processed either as men of science or men of commerce or consumers. Therefore, in the fact of that case that there was no question of infringement as the ingredients, the active ingredients, the solvent and the emulsifier of the product were known; the process was known, the product was known and the use was known. Therefore, the patent was liable to be revoked.

Section 108 of the Patent Act 1970 provides that in a suit for infringement of patent the Court may grant relief of injunction subject to such terms, if any, as the Court thinks fit. The principles upon which injunction may be granted in a patent action are the same as in other action. The plaintiff must show a *prima facie* case and the balance of convenience is in his favour.

In *Carroll* v. *Temado Ltd.* (1971 R.P.C. 401 at p. 405) it has been observed that in a patent action the onus of showing *prima facie* case justifying the grant of injunction which initially lies on the plaintiff is a very heavy one.

In patent action it may frequently happen that the defendant is able to show that there are substantial grounds for disputing the validity of the patent and often also that there are good reasons for saying that his apparatus does not infringe the plaintiff's claim. If either of these circumstances are shown to be present, the Court may not grant any interlocutory injunction (P. Narayanan's *Patent Law*, 2nd ed. para. 1381.).

In *National Research Development Corpn. of India* v. *Delhi Cloth & General Mills Co. Ltd. & Ors.* (AIR 1980 Delhi 132 para. 7) it has been held: "For the grant of temporary injunction, principles applicable to the infringement of Patent actions are that there is a *prima facie* case, that the patent is valid and infringed, that the balance of convenience is in favour of the injunction being granted and that the plaintiff will suffer an irreparable loss. It is also a rule of practice that if a patent is a new one, a mere challenge at the Bar would be quite sufficient for a refusal of a temporary injunction, but if the patent is

---

84. See Act 39 of 1970.

CENTRAL LIBRARY

sufficiently old and has been worked, the court would, for the purpose of temporary injunction, presume the patent to be valid one. If the patent is more than six years old and there has been actual user it would be safe for the court to proceed upon this presumption. Terrell on *the Law of Patents*, 12th edition in para, 830 has observed as follows:

'*Prima facie* evidence of validity:

The plaintiff must first establish such acts as will satisfy the court that there are strong *prima facie* reasons for acting on the supposition that the patent is valid. The most cogent evidence for this purpose is either that there has been a previous trial in which the patent has been held to be valid, or that the patentee has worked and enjoyed the patent for many years without dispute, or it may be that as between the parties the plaintiff is relieved from the onus of establishing validity, as where the defendant has admitted it or is so placed in his relationship to the plaintiff as to be estopped from denying it.' "

Applying the principles in the facts of that case injunction was issued against the defendant.

An English company under a licence from an American corporation manufactured certain equipment which had patents covering the manufacture and sale of the equipment in USA and England. The American Company had an English subsidiary which negotiated business in England. The licence granted by the American Company to the English company is sole and exclusive right to manufacture the equipment in Enugland and to sell it there and in certain other countries. The licence was for a period of at least 5 years. It expressly provided that the licence agreement should be deemed to be made in England and it should be read and construed according to English Law and it was enforceable in English Courts and that neither party could object to it being so enforced. It was implied term of the agreement that the American Company would do nothing to impede the English company in the manufacture and sale of the said equipment. A dispute arose after 3 years of the licence agreement between the English company and the American Company and the American company purported to determine the licence agreement before the 5-year term expired on the ground of alleged breaches of the agreement, and intimated the English company's customers that the licence has been terminated and directed another company not to supply parts of the equipments, to the English company. The English company disputed the termination of the licence and began an action in the English courts against the American company and their English subsidiary. The English company applied for an interlocutory injunction against the American Company and their subsidiary. Interlocutory injunction was passed against the American company and the subsidiary company gave an undertaking in the terms asked for. In spite of the order they committed breach, then the English company issued a writ against the said companies claiming damages for conspiracy to injure the English company's trade and for unlawful interference with their trade. Pending trial of the action the English company applied for an interim injunction restraining the defendants of the American Company and for a mandatory order requiring them to use all reasonable endeavour to comply with the order. It was held that one person without just cause or excuse deliberately interfered with the trade or business of another and did so by unlawful means i.e., by an act which he is not at liberty to commit, then he was acting unlawfully and in a proper case an injunction could be granted against him.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Applying those principles to the American Company there was a contempt of court. Such unlawful interference with the English Company's business could be restrained by the court and an injunction should be issued restraining the defendants from obeying the American Company's unlawful directions. [*Acrow Automation Ltd.* v. *Rex Chainbelt Inc.*, (1971)3 All E.R. 1175 (C.A.).]

In order to warrant the interference of the Court by Injunction in support of a patent right it is necessary to make out a good *prima facie* title and either a fair *prima facie* case of infringement or that the defendant intends or threatens to infringe the patent, for if the latter fact is established an Injunction will be granted even although no actual infringement has taken place. Infringement involves substantial identity with the subject of the privilege. There must in this, as in every other case, have been no delay or acquiescence, and the conduct of the applicant and his agent must not have been such as to disentitle him to the assistance of the Court. In addition to an Injunction a patentee can have an enquiry into damages or an account, but he cannot have both.[85] A defence in an action for infringement of patent is that the defendant was not aware of the patent or had no reasonable means of discovering its existence.[86] A patentee will have no right of action if the patent lapses.[87] Where a defendant wilfully disobeys the order of injunction, his property ought to be attached.[88]

---

85. See generally Kerr, *Inj.*, 6th ed. p. 295-328.
86. *Indian Hume Pipe Co.* v. *Vendra Venkanna*, A.I.R. 1963 A.P. 58.
87. *C. Siddeswaran* v. *R. S. Pillai*, (1977)2 M.L.J. 242.
88. *R. Prakash* v. *Chowdhary Plastic Works*, (1977)81 Punj. L.R. (D)119.

CENTRAL LIBRARY

CHAPTER XII

INJUNCTIONS TO STAY WRONGFUL ACTS OF A SPECIAL NATURE

Synopsis

91. Summary of preceding chapters.
92. Injunctions to stay wrongful acts of a special nature.
93. Injunction for and against public authority.
94. Injunction in miscellaneous matters.

91. Summary of preceding chapters.—The preceding Chapters have dealt with the issue of Injunctions in those instances in which the jurisdiction has been most frequently exercised. These are *firstly*, cases in which the Injunction has been sought in restraint of judicial proceedings, and *secondly*, those in which it has been sought in respect of matters other than judicial proceedings. The latter class of cases includes Injunctions against the breach of contract and the commission of civil wrongs or torts. Of such wrongs a selection has been made of those only which are of common occurrence, *viz.*, defamation, waste, trespass, nuisance, copyright, trade-mark and patent.

92. Injunctions to stay wrongful acts of a special nature.—It must not, however, be supposed that relief by Injunction is in any manner limited to the class of cases hereinbefore specifically dealt with. Such relief is given to prevent a party from doing that which he is under an obligation not to do. There may be, and in fact are, many obligations of a special nature, other than those already dealt with, the breach of which may be restrained by Injunction.

So where the plaintiffs sued for an Injunction to prevent the defendant from interfering with their right to present to certain persons at a certain festival in a certain temple a crown and water, and the lower Courts found that the plaintiffs possessed the right claimed and granted the Injunction; it was held that the suit was cognizable by a Civil Court under section 11 of the last Code of Civil Procedure (now represented by section 9 as amended by Act 104 of 1976) and that the Injunction was properly granted.[1] But where the plaintiff sued for an Injunction to prevent the defendant from interfering with his right to perform certain religious pageants, not connected with any temple and only supported by voluntary contributions, it was *held* that the suit was not of a Civil nature within section 9 of the Code of Civil Procedure and the Injunction was refused.[2] And where a certain section of the Mahomedan community had been for many years in the habit of burying their dead near a *darga* in the plaintiff's

---

1. *Srinivasa* v. *Tiruvengada*, 11 M. 450 (1888); see also as to Injunction against intrusion into an office: *Raja Valad Shivapa* v. *Krishnabhat*, 3 B. 232 (1879).

2. *Chunnu Dat Vyas* v. *Babu Nandan*, (1910)32 A. 527, and *see Tholappala Charlu* v. *Venkata Charlu* (1895)19 M. 62, and *Hur Lall* v. *Jeora-khan Lall*, (1862) S.B.A. N.W.P. 314.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

land, the plaintiff sued for an Injunction restraining them from exercising this right in future.[3] In the undermentioned case the plaintiffs sued for an Injunction restraining defendants from obstructing them in cutting certain branches of a pepal tree, growing in the enclosure of a temple and stated to be an object of veneration, but which overhung their property.[4] And where there was a suit by a Religious Community for declaration of right to walk in procession on a certain public road to certain temples and for an Injunction against interference, the Injunction was granted without proof of special damage because all have a right to use a public road.[5] Again, the North-West Provinces and Oudh Municipalities Act, 1883, not conferring the powers given by Act XV of 1873, to "cancel or vary" a tax imposed, the procedure to be adopted for the enhancement of an existing tax must be the same as that prescribed for the imposition of a new tax. In imposing a new tax the procedure laid down in section 42 of Act XV of 1883 must be strictly followed. Where, therefore, neither the special meeting of the Board at which an assessee's objections to a proposed tax were considered nor the special meeting at which the tax was finally imposed, were properly constituted within the meaning of section 29 of Act XV of 1883, it was held that the imposition of the tax was invalid and that there was nothing in the Specific Relief Act to prevent the High Court from granting an Injunction against a Municipality as part of the remedy in a regular suit.[6] Injunctions have also been granted between husband and wife, against parents with respect to the custody and education of children, against third persons interfering to prevent a wife from returning to her husband after a decree for the restitution of conjugal rights,[7] to restrain publication of privileged documents,[8] relating to marriage, ships and other matters too numerous to be mentioned.[9] In fact it may be generally said that there is no legal right in respect of which under proper circumstances an Injunction may not be the appropriate remedy.

The Specific Relief Act provides a remedy by Injunction for the breach of *any* obligation whatever—an obligation being defined to include every duty enforceable by law. In each case, therefore, it is necessary to ascertain *firstly*, whether or not there is any obligation existing in favour of the applicant for an Injunction, *secondly*, whether or not there has been a breach or a threatened breach of such obligation. If these two facts are made out, then an Injunction may be asked for and obtained, provided the circumstances of the particular case in which these facts are established, are such as to warrant the grant of this particular form of relief according to the general principles contained in the Specific Relief Act.

---

3. *Mohedin* v. *Shivlingappa*, 23 B. 666 (1899).
4. *Behari Lal* v. *Ghesa Lal*, 24 A. 499 (1902).
5. *Baslingappa Parappa* v. *Dharmappa Basapa* (1910)34 B. 571; *Sadgopa Chariar* v. *Rama Rao* (1902)26 M. 376.
6. *Strachey* v. *Municipal Board of Cawnpore*, 21 A. 348 (1899).
7. *O.* 21 *r.* 32.
8. *Ashburton* v. *Pope*, (1913)2 Ch. 469.
9. See Kerr, *Inj.*, 6th ed. Ch. XXI [Injunctions to stay wrongful acts of a special nature.] As to elections, see *Mahamed Meera Sahib* v. *Duraisami Naidu*, 1926, M.W.N. 582 (1925).

CENTRAL LIBRARY

93. Injunction for and against public authority.—A local authority should not be restrained by interlocutory injunction from exercising its statutory power unless the plaintiff has shown that there was a real prospect that he would succeed in his claim for a permanent injunction at the trial.

The test whether an interlocutory injunction should be granted is not different when the defendant is a body performing public duties and in such a case the plaintiff is not required to establish a *prima facie* case but need only establish that there is a serious case to be tried.

Whether the defendant is a public authority performing duties to the public, one must look at the balance of convenience more widely and take into account the interest of the public in general to whom the duties are owned. This is an example of the special factor affecting the balance of convenience which are referred to in *American Cyanamid Co.* v. *Ethicon Ltd.* in (1975)1 All E.R. 504 [*Smith* v. *Inner London Education Authority,* (1978)1 All E.R. 411 (CA)].

In a case the defendent owned three adjoining houses in London which they wished to unite and make into a hotel. The Greater London Council on application, gave permission but only on the condition that adequate fire escape was to be provided. The defendent in violation of Statute made certain unauthorised constructions.

It was held that notwithstanding an Act providing a remedy in an inferior court for breach of this provisions, the High Court had power to enforce obedience to the law as enacted by way of injunction wherever it was just and convenience to do so. It was in the public interest that an injunction should be granted in order that the grave risk of serious loss of life might be avoided [*Attorney General* v. *Chaudry,* (1971)3 All E.R. 938 (C.A.)].

A statute created certain offences and prescribed a penalty of not more than specified amount for any offence committed contrary to the provision in the statute. A husband and wife were shop keepers were prosecuted several times on the complaint of other shop keepers for contravention of the statute and paid fine on conviction. The defendants paid fines and continued to commit offences. On an appeal by the Attorney-General acting in an action on the relation of the local authority from the refusal of an injunction to restrain the defendants from contravening the statute as in the special circumstances of the case, the defendants had caused no injury to the public.

Held that an individual or public body persistently broke the law and there was no sufficient sanction to prevent the breach, the court might, in its discretion, grant at the suit of the Attorney-General, as representing the whole public, an injunction to secure obedience to the law. In the case though the Court had a discretion and the particular offence was trivial, yet it was desirable that the defendants should be stopped from deliberately flouting the law, and an injunction could be granted [*Attorney-General* v. *Harris,* (1960)3 All E.R 207].

Where the Crown was engaged in litigation for purpose of asserting a proprietory or contractual right, the ordinary rule applied and on a motion by Crown, the court would not grant an interlocutory injunction unless the Crown chose to give the usual undertaking to damages. Where however the Crown had commenced proceeding for an injunction for the purpose of enforcing the law in the manner prescribed by Statute, it was for the person against whom an interlocutory injunction was sought to show special reason why it should not be

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

granted or should only be granted on terms. Unless and until a statutory instrument had been declared to be ultra vires by a final judgement in the court, the instrument was to be treated as part of the liability and enforced accordingly [*F. Hoffman-Laroche & Co.* v. *Secy of State for Trade & Industry*, (1974)2 All E.R 1128 (H.L.)].

The plaintiff brought an action against the BBC for an injunction restraining the continuance of alleged propaganda against people who were of German origin. The plaintiff relied on section 6 of the Race Relations Act, 1965, but did not allege that he personally was injured. The plaintiff instituted the action without consent of the Attorney General. Held the section did not confer any legal right to the plaintiff but created only a criminal offence. Moreover the enforcement of remedies under the Act was intended, on the construction of the statute, to be under the control of Attorney General. In the absence of a legal right in the plaintiff, his action for injunction was not maintainable and accordingly the statement of claim would be struck out and the action would be dismissed [*Thorne* v. *B.B.C.*, (1967)2 All E.R. 1225 (CA).].

Where matters of public revenue are concerned interim orders ought not to be granted merely because a *prima facie* case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest.

However, interim orders must be made under Art. 226 of the Constitution of India against public authorities where gross violations of the law and injustices are perpetrated or are about to be perpetrated, or where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in public impartiality of public administration. But since the law presumes that public authorities function properly and *bona fide* with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions or orders causing administrative, burdensome inconvenience or orders prevening collection of public revenue for no better reason than that the parties have to the court alleging prejudice, inconvenience or harm and that a *prima facie* case has been shown. There are no hard and fast rules. But prudence, discretion and circumspection are called for [*Assistant Collector of Central Excise, Chandannagar, West Bengal* v. *Dunlop India Ltd.*, A.I.R. 1985 S.C. 330 : (1985)1 S.C.C. 260].

A writ petition was filed by a Tax payer restraining the Municipality from recovering a graduated consolidated rates on the annual value of the holding in terms of an amended provision of the Bengal Municipal Act and obtained an interim order for stay of recovery of tax. It was held that normally, the High Court should not in proceedings under Art. 226 of the Constitution of India grant any stay of recovery of tax, thereby blocking the source of revenue, on mere asking of the party challenging the tax. The grant of stay in such matters should be an exception and not a rule. The main purpose of passing an interim order is to evolve a workable formula or arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter so that larger public interest is not jeopardised and institutional embarrassment is eschewed. The only consideration should be to ensure that no prejudice is occasioned to the

CENTRAL LIBRARY

rate payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the Court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. The High Court should exercise self-discipline in passing interim orders without entering into the question of amplitude and width of its powers to grant interim relief. It should also have regard to the weighty institutional considerations like the need to maintain decorum and comity so that there may not be any disparity in matter of various orders of grant of stay by the Single and Division Benches of the same High Court [*Siliguri Municipality* v. *Amalendu Das*, (1984)2 S.C.C. 436].

A writ petition was filed against an order of acquisition of land of a company by the State of Rajasthan and an interim order was obtained. It was held that although the powers of the High Court under Art. 226 of the Constitution of India are far and wide but the Judges must be vigilant to protect the citizen against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore they must always use such extensive powers with due circumspection and self-ordained restraint in the larger public interest. The High Court must determine the extent of its territorial jurisdiction before making such interlocutory orders [*State of Rajasthan* v. *Swaika Properties*, (1985)3 S.C.C. 217].

An importer of inedible beaf tallow filed a Writ petition praying to prevent or to quash an apprehended or purported action under clause 8B of the Import Control Order and obtained an *ex parte* interim stay order with option to vacate the order by the Import Control authority. The petitioner made an application for contempt against the Chief Controller of Import & Exports and others and obtained an interim order overruling the request for application for vacating the interim order being heard. It was held that the court should be circumspect in the matter of granting interim order more particularly so where the interim relief is directed against the orders or actions of public officials acting in discharge of their public duty and in exercise of statutory powers. The only appropriate order to make in such type of cases is to issue notice to the respondent and make returnable within a short period. This should particularly be so where the offices of the principal respondents and relevant records lie outside the ordinary jurisdiction of the court. To grant interim relief straightaway and leave it to the respondents to move the court to vacate the interim order may jeopardise the public interest [*Union of India* v. *Oswal Woolen Mills Ltd.*, (1984)2 S.C.C. 646].

Plaintiff was in possession of land belonging to State having grown trees thereon. Plaintiff though not perfected his title till date of the suit, he was not entitled to remove trees. Six months time given to plaintiff to cut and remove trees and to deliver vacant possession to State. A suit against BDO cannot be dismissed for want of notice under section 80 where notice has been given to State which was not made party [*Ghulam Rasool* v. *State of Jammu and Kashmir*, A.I.R. 1983 S.C. 1188].

A draft order in Council gave effect to Boundary Commission's recommendation for redistribution of seats. Application to restrain draft order from being submitted to her Majesty in Council.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

The exercise of discretion was a matter for Parliament and it was not competent for the court to determine whether a particular line of approach which commended itself to the Commission, was the best; in the present case the recommendations of the Commission were not manifestly at variance with the Act. Therefore, the resolution of the House of Parliament approving the Draft Order in Council was not affected by any invalidity and the injunction should not have been granted [*Harper* v. *Secretary of State for the Home Department*, (1955)1 All E.R. 331 (C.A.)].

An inhabitant can file a representative action to hold annual fair or wake without the Attorney General being a party. The plaintiff made out an entitlement to the holding of annual fair or wake either by virtue of statutory right which could not be waived by the inhabitants nor lost by disuse or by franchise which could not be abandoned and the right was not by reason of being a right to hold a fair or wake vague or uncertain. Injunction was the means of enforcing the right of inhabitants as their legal right was established. an injunction would be granted [*Wyld* v. *Silver,* (1962)3 All E.R. 309 (C.A.)].

In *Golabchand Chhotalal Parikh* v. *State of Gujarat* (A.I.R. 1965 S.C. 1153) it has been held that decision in earlier writ petition on merits bars a subsequent suit involving the same questions for the same relief upon general principles of *res judicata*.

94. Injunction in miscellaneous matters.—Under the heading of this Article we shall discuss the principles which govern the grant of injunction in criminal matters, arbitration matters, religions matters and matters relating to matrimonial causes.

In *Karamchand Gangaprasad* v. *Union of India* (A.I.R. 1971 S.C. 1244) it has been held that it is a well established principle of law that the decisions of the Civil Courts are binding on the criminal courts. The converse is not true. Then in *Ram Sumer Puri Mahant* v. *State of U.P.* (A.I.R. 1985 S.C. 472) it has been held that there is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before the Supreme Court. Parallel proceedings should not be permitted to continue and in the event of a decree of a Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the Civil Court and the parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of Receiver for adequate protection of the property during pendency of dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

In arbitration cases the power of the Court to grant injunction is derived from the specific statutory provision in Section 41 read with para. 4 of the Second Schedule of the Arbitration Act, 1940. In order to invoke the jurisdiction for obtaining injunction the Court must be satisfied that grounds have been made for issue of injunction in accordance with the general principles of law.

In *Brojendra Kumar* v. *Jitendra Chandra* [A.I.R. 1960 Assam 111 (S.B.)] it has been held that the mere order of the Magistrate under section 145, Cr. P. C. that a party would be treated to be in possession did not in any manner affect the jurisdiction of the Civil Court to grant an injunction restraining the defendant form dispossessing the plaintiff, if an appropriate case was made out for the exercise of discretion under Order 39 of the Code of Civil Procedure.

CENTRAL LIBRARY

Sections 144, 145, 146 and 147 of the Code of Criminal Procedure and similar other sections are preventing sections enabling courts of Metropolitan or Judicial Magistrates to pass temporary orders so that the breach of peace, if any, may be averted. They do not decide the rights of the parties except for the purpose of temporarily keeping the parties at peace.

The Court is vested with jurisdiction to issue injunction in arbitration proceedings provided that arbitration proceedings have already been commenced or pending either before the Court or the Arbitrator of Umpire. Such application may be made pending an application under section 20 of the Arbitration Act before the Court when arbitration proceedings can be said to have commenced as laid down in Section 37(4) of the Arbitration Act, 1940. The Supreme Court in *H. M. Kamaluddin Ansari & Company* v. *Union of India* (A.I.R. 1984 S.C. 29) has laid down that injunction and order restraining the respondents from withholding the amount due to the appellant for the pending bills in respect of other contracts can not be said to be for the purpose of and in relation to the pending arbitration proceedings. Therefore, the principle of issuing injunction in arbitration matters is applied only for the purpose of and in relation to arbitration proceedings.

In *Kaliprasad Das* v. *Gadadhar Sahu* (A.I.R. 1978 Orissa 8) it has been held that no injunction can be issued to restrain a party from prosecuting proceeding under section 145 of the Criminal Procedure Code. In *Bansi* v. *Sewakaram* (A.I.R. 1979 Bom. 274) it has been held that execution of an order under s. 145 Cr. P. C. by a party passed in his favour, pending suit for partition filed by the other party in possession does not cause any legal injury and as such no order under Order 39, rule 2 is warranted.

In *Deity Mandir* v. *Gramsabha* (A.I.R. 1973 H.P. 2) it has been held that if the defendant desecretes the *Samadhies* of *Sadhus* who were burried on plaintiff's land, the Court can restrain the defendant by an order of injunction from doing so.

In *Syed Farzand Ali* v. *Nashir Beg* (A.I.R. 1980 All 342) it is held that a Muslim is entitled to enter a mosque which is dedicated to God and join in the prayer and utter the words 'Ameen' loudly but not with the aim or *mala fide* intention to disturb the peace of the congregation.

It was held in *Narahari Sastry* v. *Shree Badrinath Temple Committee* (A.I.R. 1952 S.C. 245) that it is always competent for the temple authorities to make and enforce rules to ensure good order and decency of worship and prevent overcrowding in a temple. Good conduct or orderly behaviour is always an obligatory condition of admission into a temple. This principle has been accepted by and recognised in the Shree Badrinath Temple Act, sec. 25 of which provides for framing of bye-laws by the Temple Committee *inter alia* for maintenance of order inside the temple and regulating the entry of persons within it. Hence it is declared that the Pandas are entitled to accompany their *Yajmans* inside the temple subject to any bye law or rules made by the Committee in proper exercise of their powers under sec. 25 of the said Act.

In *Sri Sinha Ramanuja Jeer* v. *Sri Ranga Ramanuja Jeer* (A.I.R. 1961 S.C. 1720) it has been held that under sec. 9 of the Civil Procedure Code the Court has jurisdiction to entertain every suit of a civil nature excepting suits

CENTRAL LIBRARY

for which its congnizance is either expressly or impliedly barred. As a corrolary to this it follows that a Court cannot entertain a suit which is not *prima facie* of a civil nature. Suits raising questions of religious rights and ceremonies only are not maintainable in a civil court, for they do not deal with legal rights of parties. But the explanation to the section excepting the said undoubted position says that in a suit in which the right to property or to office is contested is a suit of civil nature not withstanding that such right may entirely depend on the decision of a question as to religious rights or ceremonies. It implies two things : (1) A suit for an office is a suit for a civil nature ; (2) It does not ceasc to be one even if the said right depends entirely upon a decision of a question as to religious rights or ceremonies. It implies further that question as to the religious rights or ceremonies cannot, independently of such a right, form the subject matter of a civil suit.

In *Nagarwalli Devi* v. *Girjapati Tewari* (A.I.R. 1982 All. 80) it has been held that the dispute amongst the members of a family about the sharing of a right to receive offerings made to the deity and the income from its property can only be resolved by a suit for partition of the sebaitee rights to enable the co-sharers to enjoy the offerfings and the income of the deity in proportion of their respective shares. A suit for injunction at the instance of one of the co-sharer against the other co-sharers is not maintainable.

In *Gulam Abbas* v. *State of Uttar Pradesh* (A.I.R. 1981 S.C. 2198) it was held that the customary rights of *Shia* community in Varanasi to perform religious rites on certain plots at the time of Moharam was established in earlier decree of Court and as such would operate as *res judicata* in subsequent proceedings. It was held further in that case that case that an order made under s. 144, Cr. P. C. is amenable to writ jurisdiction if it violates fundamental right. It has been held in *Vidyasagar* v. *Anand Swarup* (A.I.R. 1981 All. 106) that a suit under Order 1 rule 8 of the Code of Civil Procedure for an injunction against wrongful user of property of temple is maintainable.

There is no specific provision in a marriage or divorce law in India. But in proper cases the court can by order (whether final or interlocutory) grant an injunction in all cases in which it appears to the court to be just and convenient to do so either under sec. 151, C.P.C. or under Order 39, rr, 1, 2, C.P.C. It is the discretionary power of the courts to grant an injunction in cases within their jurisdiction. An interlocutory injunction may be granted in matrimonial proceeding whenever it appears to be just and convenient or for the ends of justice. The court shall grant an injunction to protect legal right or to protect the welfare of children. Where a dispute is pending for full hearing, the court will normally try to preserve the *status quo*, although it is to be kept in mind that each case has its own peculiarity. In case of "ouster injunction" that is ordering one party to vacate the matrimonial home it is complicated. There are conflicting views on this issue in English law. (See *Gurasi* v. *Gurasz* [1970] P. 11 C.A.; *Hall* v. *Hall*, [1971]1 W.L.R. 404; *Bassett* v. *Bassett*, [1975] Fam. 76, C.A.; *Samson* v. *Samson*, [1982]1 W.L.R. 252; *Richards* v. *Richards*, [1983]1 All. E.R. 1017 C.A.).

Prior to the omission of section 6 of the Hindu Marriage Act by the Child Marriage Restraint (Amendment) Act, 1978, section 6(5) of the Act conferred power to the District Court to grant prohibitory injunction restraining the

CENTRAL LIBRARY

parties from solemnizing a marriage in which the consent of the guardian of the bride was required. In granting the injunction the court had to consider the interests of the bride. A breach of any such injunction would not render a marriage invalid (*Khushalchand* v. *Bai Mani,* 11 Bom. 347).

The court may also grant interim financial relief by an order that a party to the marriage shall pay a lump sum to the other party to meet any liability or expenses reasonably incurred in maintaining the party or any child of the family. Such lump sum may be paid by instalments.

The court has power to pass order relating to interim custody, care, control and access to children. This power can be exercised before or on granting a decree or at any time thereafter. The court makes such order keeping in view the paramount welfare of the child.

CENTRAL LIBRARY

MODEL FORMS OF PLAINTS AND APPLICATIONS

1. Suit for an injunction restraining execution of a decree.

1. That the defendant had instituted a Money Suit No..... of 1980 against this plaintiff in the Court of Munsiff.....for recovery of Rs. 1,500 only.

2. That the plaintiff entered appearance in the said money-suit and filed written statement.

3. That during the pendency of the said money-suit, the plaintiff and the defendant came to written terms and it was agreed that in case the plaintiff retired from the suit and did not contest the money-suit the defendant would not execute the decree, if any, of the said money-suit against this plaintiff.

4. That the plaintiff did not contest and he retired from the money-suit. The said money-suit was decreed against the plaintiff.

5. That the defendant in breach of the aforesaid written contract, has filed a Money Ex. No...../1985 against the plaintiff.

6. That the plaintiff is entitled to an order of injunction restraining the defendant from proceeding with the said Money Ex. Case No..... of 1985.

The plaintiff prays :

(*a*) For an injunction restraining the defendant from proceeding with the said Money Ex. Case No...../1985.

2. Suit for prohibitory injunction restraining breach of contract.

1. That the defendent entered into a contract to lease out his property described in the schedule hereunder with the plaintiff by a registered deed dated July 10, 1985.

2. That clause 4 of the said deed of lease provides that the defendant would not dig any earth in or around the leased out property.

3. That the defendant in violation of the said clause 4 has begun digging earth in the said scheduled property.

4. That the cause of action arose on .....

5. That the suit is valued at Rs.....for the purpose of jurisdiction and court fees.

The plaintiff prays for a decree granting injunction restraining the defendant, his agent or servant from digging earth in the suit-property.

3. Suit by landlord against tenant for prohibitory injunction restraining breach of covenant.

1. By a deed of lease dated.....1980, the plaintiff delivered to the defendant a flat on the first floor at.....in the city of.....for dwelling purposes at a monthly rent of Rs.....

2. By the said deed of lease the defendant covenanted to use the said premises as a private residence only and not to do or permit to be done on the same premises that shall cause annoyance or nuisance or interfere with the comfort

CENTRAL LIBRARY

of the plaintiff or other occupants of the said dwelling house nor would the house be used for any illegal or immoral purpose.

3. The defendant in breach of the said covenant has permitted the said premises to be so used as to cause annoyance and interfere with the comfort of the plaintiff and other occupants of the said dwelling house. The particulars of such annoyance are given below :

Particulars

(1) .....
(2) .....
(3) .....
(4) .....

4. On July 19, 198..... The plaintiff and other occupants of the said dwelling house complained to the defendant about the aforesaid acts of annoyance, but the defendant did not pay any heed to that complaint.

5. The defendant threatens, unless restrained from doing so, to continue to commit the breach of convenant complained of.

6. (Cause of action)

7. (Jurisdiction and court fees)

The plaintiff claims—

An injunction to restrain the defendant from further committing the aforesaid acts or any other breach of the covenant dated ....., 1980.

4. Suit for injunction restraining an election.

In the Court of.....
Suit No.....of 198.....

X son of Y, Secretary residing at .....P.S.....Dt.....

—Versus— Plaintiff.

1. .....High School represented by the President of the Managing Committee of the said school, situated at vill.....P.S.....Dt. .....

2. The Managing Committee of the.....High School constituted by

(*i*) A
(*ii*) B
(*iii*) C
(*iv*) D
(*v*) E
(*vi*) F
(*vii*) G
(*viii*) H
(*ix*) I
(*x*) J
(*xi*) K

(State names and residence of each defendant)

.....Defendants.

Suit for injunction.
Valued at Rs.....

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

The above-named plaintiff states as follows :

1. That the.....High School, established long back at ..... within P.S..... Dt.....was being run and managed by a Managing Committee duly elected in November, 198.....and the plaintiff was at all material times and is the Secretary of the Managing Committee of the said school.

2. That the plaintiff together with the defendants Nos. 2(*i*) to 2(*ix*) are members of the present Managing Committee of the defendant school. Defendant No. 2(*ii*) is the Headmaster of the defendant school, now on leave, and is *ex officio* Assistant Secretary of the Managing Committee of the school.

3. That the defendant school is governed by Rules and Regulations framed by the Education Department, Government of ..... and by the Board of Secondary Education, ... from time to time, pursuant to provisions in the ..... Act, 19..... And the Rules and Regulations contained in Notification No..... dated ..... of the Education Department, Government of ..... and Circular issued by the Board of Secondary Education,..... supplementing the said Notification govern the procedure for election of members to the Managing Committee of a high school like the defendant school.

4. That under relevant rules the plaintiff is a donor and is automatically a life member of the Managing Committee of the said school.

5. That the Managing Committee was directed by a letter No..... dated ..... by the Board of Secondary Education ..... to hold a general election for election of members to the Managing Committee for the said ..... high school.

6. That for such election a Voters' List and a programme in details are to be prepared by the head of the institution, as per instructions of the said Board contained in Circular Rule of the said Notification No..... dated.....of the Education Department, Government of.....in consultation with the Managing Committee where there is any, and such a Voters' List and the programme should be approved at a meeting of the outgoing Managing Committee.

7. That the said Voters' List is to be prepared under different categories, *i.e.*, it is to contain names, amongst others, of donors, persons interested in education and so on. Every page of such Voters' List shall have to be counter-signed by the Secretary of the Managing Committee.

8. That the defendant No. 1 of the defendant school has allegedly prepared a Voters' List but not in consultation with the Managing Committee nor has the said Voters' List been approved by the outgoing Managing Committee in a meeting. The Voters' List does not bear the counter-signature of the Secretary of the Committee.

9. That further the said Voters' List has been prepared wrongly inasmuch as the name of the plaintiff, a donor, is not found mentioned therein.

10. That under the existing Rules and Regulations such an election should be held and conducted by a person who is not in any way connected with the management of the school or is not a candidate for election. But the person shall be selected by the head of the institution in consultation with the Managing Committee if not otherwise directed by the Board. That in the instant case the Board has not made any specific direction. The plaintiff states that no such person has been selected by the head of the institution in consultation with the Managing Committee and the defendant No.....has usurped illegally the authority to conduct the proposed election.

CENTRAL LIBRARY

11. That the defendant No.....has illegally encroached upon the authority of the Managing Committee and has issued a notice (printed) dated..... for holding the election of members to the Managing Committee on..... and has further issued a programme of election. The defendant was not authorised by the Managing Committee in a meeting to issue the said notice. The said notice is without jurisdiction and any election on the basis of the said notice and programme is void and is liable to be set aside.

12. That the plaintiff Secretary of the Managing Committee of the school is not aware of the proposed election which is going to be held on.....

13. That any election of the members to the Managing Committee on the basis of the said Voters' List, prepared illegally and wrongly due to omission of the name of the plaintiff and of counter-signature by the Secretary and on the basis of the programme not approved in a meeting will be void and without jurisdiction and is liable to be set aside.

14. That for the election of members to the Managing Committee the defendant school would for obvious reasons entail large amount of expenditure from the school fund. In case the election is held void, the entire money spent will be for nothing.

15. That in the circumstances the defendants should be restrained by an appropriate order of injunction from holding the proposed election on ..... on the basis of the said Voters' List prepared by the defendant No. ..... illegally and incorrectly.

16. That the cause of action for this suit arose at Mouja ..... within the jurisdiction of this court on ..... when the notice for holding the election was issued by the defendant.

17. That for the purpose of jurisdiction and court-fees the suit is valued at Rs. ..... and court-fees of ..... are paid.

The plaintiff therefore prays:

(*a*) that the suit be decreed granting

(*i*) temporary injunction till disposal of the suit;

(*ii*) permanent injunction restraining the defendants to forbear from holding the election on ..... of the members of the Managing Committee of the defendant school on the basis of the Voters' List prepared by the defendant;

(*b*) costs of suit,

(*c*) such other relief or reliefs as law and equity would allow the "
plaintiff.

Verification

5. Suit for an injunction restraining an act of dispossession.

In the Court of.....

Title Suit No..... of.....

Suit for Injunction.
Valued at Rs.....

1. That one X, son of late Y held a land measuring about..... for Rs.....at Mouja ..... P.S.....under Jote interest of one 'C'.

CENTRAL LIBRARY

2. That the said X sold the land to the plaintiff's father M by a registered kobala dated.....M held and possessed the same till 1940, when he died leaving the only son and heir, i.e. the plaintiff and the said property devolved on the plaintiff. The plaintiff has been possessing the land in the Schedule below.

3. That in course of current settlement the land in Sch. "A" was wrongly recorded in "O" khatian in favour of the State.

4. Thereupon the plaintiff had, after service of a notice under sec. 80 C.P. Code on the State, brought a Title Suit No.....in the court of the Sub Judge.....against the defendant State Government. The said Title Suit was decreed in favour of the plaintiff on.....whereby the plaintiff's right, title and interest in the property in Sch. "A" was declared and the khatian, published by the State, in respect of the said property was declared erroneous. The plaintiff will file the decree of the said Title Suit No.....in this court at the time of hearing.

5. That the plaintiff thereafter had submitted a petition on.....to the Settlement Officer.....in the Settlement "P" Camp, praying for opening a khatian in respect of the property in Schedule "A" below in favour of the plaintiff. That was not done.

6. That the said land in Sch. "A" hereinunder is the subject matter of the suit. The same stands recorded, even after passing of the aforesaid decree, in the name of the defendant State which is threatening the plaintiff with dispossession of the said property on the basis of the erroneous khatian since June, 19.....

7. That the plaintiff is entitled to a decree granting Injunction

(*i*) temporary, till disposal of suit :

(*ii*) Permanent restraining the defendant State of West Bengal from taking possession of the land in Schedule "A" below.

8. That the plaintiff has served a notice dated.....under sec. 80 of C.P. Code on the Collector.....by registered post with A/D through his lawyer Sri.....Advocate.

9. That the cause of action for this suit arose at.....within the jurisdiction of this court in June 19 , whenfrom the plaintiff is being threatened with dispossession of the suit property.

10. That for the purpose of jurisdiction and court-fees the suit is valued at Rs. 100 being value of relief prayed for and *ad valorem* court-fees are paid.

The plaintiff, therefore, prays :

(*a*) that the suit be decreed granting permanent injunction restraining the defendant State Government from dispossessing the plaintiff and/or taking possession of the suit land in Schedule "A" below.

(*b*) Cost of suit.

Schedule "A"

(State here particulars of suit-land)

Verification

6. Suit for mandatory-cum prohibitory injunction by a landlord against a tenant.

The plaintiff states as follows :

1. That the defendant is a monthly tenant under the plaintiff in respect

CENTRAL LIBRARY

of the premises, described in the Schedule below, at a rent of Rs.....p.m., according to English calendar month.

2. That there is an open courtyard within the premises let out to the defendant.

3. That the defendant without prior consent of or notice to the plaintiff began to construct a pucca well in close proximity of the eastern room of the Schedule below and has already dug earth to a considerable depth in violation of terms of tenancy. The defendant, unless restrained by an appropriate order from a competent court of law, it is apprehended, will continue the said act of construction.

4. That the cause of action for the suit arose on.....when the defendant began digging earth for constructing a pucca well at.....within the jurisdiction of this court.

5. That for the purpose of jurisdiction and court-fees the suit is valued at Rs. 100 and court-fees of Rs.....are paid thereon.

The plaintiff, therefore, claims for a decree :

(*i*) of mandatory injunction directing the defendant to fill up the ditch forthwith ;

(*ii*) prohibitory injunction restraining the defendant from digging earth or constructing a well or any structure in the said premises.

Schedule

(State here the particulars and description of the premises)

7. Suit for an injunction restraining acts of waste.

The above-named plaintiff states as follows :

1. That the defendant is a monthly tenant under the plaintiff in respect of the premises described in the Schedule below.

2. That the defendant, without prior consent of the plaintiff, pulled down four C.I. sheets from the roof of the veranda of the room as stated in the Schedule below and threatened to pull down the remaining C.I. sheets of the said roof, intending to raise the height of the room.

3. That the defendant unless restrained immediately by an order of injunction, the plaintiff shall, suffer injury and loss.

4. Cause of action (when act of waste first began to be committed.)

The plaintiff, therefore, prays :

For an injunction restraining the defendant from committing further waste in the premises in the Schedule below.

Schedule

(Description of the premises)

(*i*)

(*ii*)

8. Suit for an injunction against the obstruction and diversion of the course of water.

The plaintiff states as follows :

1. That the plaintiff owns a factory known as.....standing on the bank of the river.....in the town..... .....at .....Dt .....

CENTRAL LIBRARY

The plaintiff had been using water of the said river for working the said factory for the last seven years when the factory first commenced manufacturing process of.....(product).

2. That the defendant has of late started a factory on the same bank of the river at a distance of.....and on.....cut the bank of the said river to a considerable length and thereby obstructed and/or diverted the course of water for the use of the factory of the defendant.

3. By reason of the premises aforesaid, the plaintiff is deprived of the usual and natural flow of the water of the said river and the manufacturing process of the factory is being seriously affected.

4. The plaintiff is, therefore, entitled to a mandatory injunction directing the defendant to restore the original flow of the water for the use and benefit of the plaintiff's factory so long enjoyed and to restrain the defendant from doing acts of any obstruction and/or diversion of the water course of the river in future.

5. (Cause of action).

6. (Jurisdiction and court fees).

The plaintiff claims—

(a) An injunction directing the defendant its servants, agents and/or assign to restore the natural flow of the water of the river..... as was prior to the cutting of the bank thereof for diversification of the usual course of its water.

(b) An order that the defendant do forthwith close the excavation of the channel from the said river.

9. Suit against electric supply corporation for correction of defective meter.

In the court of the ....

Title Suit No ..... of 19.....

.....

son of .....

residing at .....

P.S. ..... District ..... Plaintiff.

—Versus—

.....

son of .....

residing at .....

P.S. ..... District ..... Defendant.

Suit for declaration and injunction valued at Rs.....

CENTRAL LIBRARY

The plaintiff abovenamed states as follows :—

1. That the plaintiff is the consumer of the

electricity of meter No. .....

installed at premises No. .....

2. That there was neither any addition of electric point nor any excessive consumption.

3. That the meter is wrong and defective, since it shows the consumption of abnormal and unusual units.

4. That there is invasion of the plaintiff's right by reasons of the facts stated above.

5. That the cause of action for the suit arose on ..... at .....within the jurisdiction of this court.

6. That for the purpose of court fee and jurisdiction the suit is valued at Rs..... and ad-volerem court fee is paid thereon.

7. The plaintiff accordingly prays for :—

(a) Declaration that the meter is wrong and defective,

(b) Mandatory injunction for correction of meter,

(c) Permanent injunction restraining the defendant from realising electric charge on the basis of wrong and defective meter,

(d) All costs of the suit,

(e) Other reliefs.

Verification.

10. Suit against Municipal Corporation for illegal and wrong assessment of Tax.

In the court of .....

Title Suit No. ..... of 19.....

.....

son of .....

residing at .....

P.S. ..... District ..... Plaintiff.

—Versus—

son of .....

residing at .....

P.S. ..... District ..... Defendant.

Suit for declaration and injunction valued at Rs.....

CENTRAL LIBRARY

The abovenamed plaintiff states as follows :—

1. That the plaintiff is the owner and occupier of holding No.....

2. That there was no addition or alteration of premises described in the schedule below.

3. That there was depreciation in value of the building as the building is old and dilapidated.

4. That the assessment made by the defendant is wrong and illegal.

5. That the cause of action for the suit arose on ..... at ..... within the jurisdiction of this court.

6. That for the purpose of court fee and jurisdiction the suit is valued at Rs..... and *ad valorem* court fee is paid thereon.

7. The plaintiff therefore prays for:—

(a) Declaration that the assessment is wrong and illegal.

(b) Permanent injunction restraining the defendant from realising tax on illegal and wrong assessment,

(c) Costs,

(d) Other reliefs.

Schedule of suit property

Verification.

11. Suit for injunction restraining the defendant from creating nuisance.

In the court of ..... at .....

Title Suit No. ..... of 19.....

....

son of .....

residing at

P.S. ..... District ..... Plaintiff.

—Versus—

....

son of .....

residing at ....

P.S. ..... District ..... Defendant.

Suit for injunction restraining the defendant from creating nuisance.

CENTRAL LIBRARY

The abovenamed plaintiff states as follows :—

1. That the plaintiff is the owner and occupier of the premises No.....

2. That the defendant's house is situated just by the side of the plaintiff's house.

3. That the defendant is creating nuisance causing thereby irreparable injury to the person and property of the plaintiff.

4. The particulars of nuisance are given below :—

(a)

(b)

(c)

(d)

5. That the defendant is liable for actionable nuisance.

6. That for the purpose of court fee and jurisdiction the suit is valued at Rs..... and *ad valorem* court fee is paid thereon.

7. That the cause of action for the suit arose on ..... at ..... within the jurisdiction of this court.

8. The plaintiff therefore prays for :

(a) Permanent injunction restraining the defendant from creating nuisance.

(b) Costs.

(c) Other reliefs.

Verification.

12. Suit by a purchaser of the goodwill of a business.

1. The plaintiff is a tailor carrying on business at No. Street, Calcutta, under the name of.....

2. The defendant was the former owner of the said premises and the tailoring business carried therein under the said name of.....The defendant sold the premises as well as the tailoring business carried on therein under the said name with the goodwill thereof to the plaintiff by a registered sale-deed dated 1st of March 1980 for a sum of Rs. 15,000. It was a term of the contract contained in the said sale-deed that the defendant should not carry on tailoring business in the city of Calcutta, for a period of five years from the date thereof.

3. The plaintiff entered into possession of the said premises and has ever since carried on tailoring business therein under the said name of.....

4. On 1st of July 1981 the defendant became a tenant of a shop at No. ..... Street ..... at a short distance of the plaintiff's aforesaid premises and commenced to carry on tailoring business therein under the said name of.....quite identical to that of the plaintiff.

5. The defendant has committed a breach of contract contained in the said sale-deed.

CENTRAL LIBRARY

6. The plaintiff gave notice dated ..... to the defendant to discontinue the aforesaid wrongful act. The defendant has, however, failed and neglected to comply with the said notice and threatened to continue to commit it in future.

7. The plaintiff has thereby sustained damage.

Particulars

Since 1st of July, 1981 the income from the plaintiff's business has fallen from Rs. 100 per day on an average obtained during the previous year to Rs 75-/ per diem.

8. ..... (Cause of action).

9. ..... (Jurisdiction and court fees).

The plaintiff therefore claims—

(a) an injunction restraining the defendant or his servants or agents from carrying on a tailoring business under the name of.....or any other name in his present or any other premises in the City of Calcutta.

(b) Rs. 5,000 by way of damages.

13. Application under Order 39 rules 1 and 2 C.P.C. for temporary injunction.

In the Court of.....at.....

Suit No..... of.....

(Cause title)

The humble petition of the plaintiff above named

Most respectfully sheweth

1. That the plaintiff has filed the above suit for declaration and permanent injunction in respect of suit property described in Schedule 'A' herein.

2. That the defendant is threatening to dispossess the plaintiff by constructing a building therein inspite of the knowledge of the defendant that the said property belongs to the planitiff by virtue of the deed dated.....

3. That the defendant has stored bricks and other materials for building construction on the said property.

4. Unless the defendant is restrained by an order of temporary injunction, the plaintiff will suffer irreparable loss and injury.

It is therefore prayed that—

(a) An order of temporary injunction be passed against the defendant restraining the defendant, his agent and/or servant from interfering with the possession of the property as described in Schedule 'A' herein.

(b) An ad-interim order in terms of prayer (a) above.

Schedule A

Description of property.

CENTRAL LIBRARY

14. Application for injunction under sec. 41, Arbitration Act, 1940.

(Cause title)

The petition of the petitioner above-named

Most respectfully sheweth

1. That by an agreement between the parties hereto made on..... the petitioner supplied 5000 pieces of gunny bags to the respondent for the value of Rs.....

2. That the respondent accepted the said goods unconditionally but has failed to pay the price thereof and raised a dispute as to the quality of the said gunny bags.

3. That in terms of arbitration clause of the said agreement the petitioner asked by a notice to nominate the arbitrator but has not yet done so.

4. That the petitioner has filed a suit being No..... of ..... under section 20 of the Arbitration Act.

5. That the petitioner has come to know that the respondent has left the said gunny bags uncared so as to cause deterioration in quality and value.

6. That the petitioner is also trying to dispose of his property and to evade jurisdiction of this court.

7. This application is made *bona fide* and for the ends of justice.

Your petitioner, therefore, prays that—

(a) Order be passed appointing receiver over the properties of the respondent.

(b) Order of injunction restraining the respondent, his servant or agent from disposing of the properties of the respondent.

(c) An interim order in terms of prayers (a) and (b) above.

15. Application for injunction in writ.

In the High Court at.....

Constitutional Writ Jurisdiction

In the matter of :

An application under Art. 226 of the Constitution of India.

And

In the matter of :

A writ of and/or in the nature of Mandamus and/or certiorari and/or prohibition and/or any other appropriate writ or writs.

And

CENTRAL LIBRARY

In the matter of :

Impugned Memo No.....
dated.....issued by .....

And

In the matter of :

.....

.....

Petitioner

—Versus—

. State of..... through
.....having office
at.....
2. District Magistrate of.....

Respondents

The Hon'ble Mr..... Chief Justice and His companion Justices of the said Hon'ble Court.

The petition of the petitioner above named

Most respectfully sheweth

1. That your petitioner is a citizen of India.

2. That your petitioner is a Licence-holder in respect of his gun No..... .....for the year.....

3. That by a Notice dated.....issued by the Respondent No. 2, your petitioner was asked to deposit the said gun by..... , a copy of which is annexed hereto and marked with the letter 'X'.

4. That your petitioner has made a representation challenging the validity of the said Notice dated ..... but with no effect. A copy of the said representation is annexed hereto and marked with the letter 'Y'.

5. Being aggrieved by the said impugned Notice dated ..... your petitioner begs to move this petition *inter alia* on the following:

GROUNDS

I
II
III (State the grounds)
IV
V

6. That your petitioner has no other alternative remedy which is speedy and efficacious.

7. That your petitioner has also served a notice demanding justice on..... ..... , a copy whereof is annexed hereto and marked with the letter 'Z'.

8. That the records of the case are lying within ..... jurisdiction of this Hon'ble Court.

CENTRAL LIBRARY

Your petitioner, therefore, prays—

(a) A writ of and/or in the nature of Mandamus to issue commanding the respondents to act and proceed in accordance with law in respect of Notice No..... dated .....

(b) A writ of and/or in the nature of certiorari to issue directing the respondents to transmit the entire records of the case to this Hon'ble Court and to certify the same.

(c) A writ of and/or in the nature of prohibition to issue restraining the respondents, their servants, agents and/or assigns from giving effect or further effect to the Notice No ..... dated .....

(d) An ad-interim order in terms of prayer (c) above.

(e) Order of costs.

(f) Any other order or direction as your Lordship may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

16. Claim for infringement of the plans and the design of house.

1. The plaintiff is an architect and the author of and the owner of the copyright in a number of plans prepared by the plaintiff for the purpose of the building of a house at [.....].

2. The said house was built in accordance with the said plans and is known as..... The plaintiff is the owner of the copyright in the features of artistic character and design embodied in the said house.

3. The plaintiff upon completion of the said house delivered the said plans to P.K. on whose behalf the same were prepared by him. He did not thereby assign to or vest in the said P.K. the copyright in the said plans.

4. The defendant is a builder and has infringed the plaintiff's copyright in the said plans by making for the purposes of the erection upon the [..... Estate] at ..... of a number of houses a copy or copies of the said plans or of a substantial part of them or of some of them.

5. The defendant has also infringed the plaintiff's copyright in the said plans and in the features of artistic character and design in the said house known as (*i.e. the plaintiff's house*) by the erection of the said houses on the said [..... Estate] each of which reproduces with colourable imitation only the said features of artistic character and design which are represented in the said plans or a substantial part thereof.

6. The plaintiff has by reason of the acts of the defendant aforesaid suffered loss and damage.

7. The defendant intends unless restrained by the Court to continue the acts of infringement aforesaid.

The plaintiff claims:

1. An injunction to restrain the defendant, his servants and agents from making any copies or colourable imitations of any substantial part of any of the plans prepared by the plaintiff for the purposes of the building of a house [known as (*description of house*) situate at.....(*here insert description of*

CENTRAL LIBRARY

locality)] and from making or erecting any building not already commenced of which the artistic character or design reproduces or is a colourable imitation of that of the building or structure represented by the said plans or of the said house.

2. Damages.
3. Delivery up to the plaintiff of all copies of the said plans.
4. Further or other relief.
5. Costs.

17. Claim for infringement of musical work by performance in public against performer and lessee of hall.

1. The plaintiffs are the owners of the copyright in a song consisting of words and music and entitled.....

2. The defendant (*performer*) on a number of occasions during the week ending on the.....of....., 19...., sang the words of the said song at the (*insert name of hall*) and played the music thereof. The said performances were in public and were given without the consent of the plaintiffs.

3. The defendant (*lessee*) is the lessee of the said hall and all performances thereat are carried on with his knowledge and authority.

4. The defendant (*performer*) by giving the said performances and the defendant (*lessee*) by authorising the same have infringed the plaintiff's copyright in the said song.

5. The said hall is a place of entertainment and the said performances thereat were given for the private profit of the defendant (*lessee*) in that he received the whole or the greater part of the receipts for tickets sold. The defendant (*lessee*) by permitting the said performances at the said hall without the consent of the plaintiffs infringed their copyright in the said song.

6. The defendants intend to repeat the acts of infringement aforesaid unless restrained by the Court and the plaintiffs as a result of the said acts have suffered damage.

The plaintiffs claim:

1. An injunction to restrain the defendants and each of them from performing in public or authorising the performance in public of a song entitled .....without the consent of the plaintiffs.

2. An injunction to restrain the defendant.....(*the owner of the hall*) from permitting the ..... Hall or any other place of entertainment to be used for the performance in public of the said song [for his private profit] without the consent of the plaintiffs.

3. Damages.
4. Further or other relief.
5. Costs.

18. Claim for infringement by dramatising and performing a work against dramatist and the manager of a theatre.

1. The plaintiff No. 1 is the author of and the owner of the copyright in a novel entitled.....which was first published on the.....th....., 1987 in [India].

CENTRAL LIBRARY

2. By an agreement dated.....th....., 19...., and made between the plaintiff No. 1 of the one part and the plaintiff No. 2 of the other part the plaintiff No. 1 agreed [*inter alia*] to assign to the plaintiff No. 2 all the copyright in the next ten novels to be written by the plaintiff No. 1. The said novel entitled (*i.e., the work mentioned in paragraph* 1) was the first novel to be written by the plaintiff No. 1 after the date of the said agreement, but no assignment of the copyright therein has yet been made to the plaintiff No. 2.

3. The defendant No. 1 has infringed the rights of the plaintiffs in the said novel by converting the same into a dramatic work entitled.....without the consent of the plaintiffs or of either of them.

4. Both the defendants have infringed the plaintiffs' rights in the said novel by procuring or authorising the performance in public of the said dramatic work without the consent of the plaintiffs or either of them at the..... Theatre on a number of occasions during the week commencing on the.....th ....., 19.....

5. By reason of the acts of the defendants aforesaid the plaintiffs have suffered loss and damage.

6. The defendants intend unless restrained by the Court to continue the acts aforesaid.

7. (Set out place and date of cause of action).

8. (Court fees and jurisdiction).

The plaintiffs claim:

1. An injunction to restrain the defendant C. D. from making and distributing any copies of the dramatic work entitled.....and from otherwise infringing the plaintiffs' copyright in the nevel entitled.....by converting the same into a dramatic work without the consent of the plaintiffs.

2. An injunction to restrain the defendants and each of them and their respective servants and agents from performing in public the said dramatic work without the consent of the plaintiffs and from authorising any such performance.

3. Damages.

4. Delivery up to the plaintiffs of all copies of the said dramatic work in the possession of either of the defendants.

5. Further or other relief.

6. Costs.

19. Claim for infringement of a work of joint authorship against author, publisher and bookseller.

In the ..... Court of

..... Plaintiff[s]
..... Defendants.

1. The plaintiffs are the joint authors of and are the owners of the copyright in [a work of fiction] entitled (*insert name of work*) which was first published on the.....day of....., 19....

2. The defendant Y. Z. is the author of and the defendants C. D. & Co. are the publishers of a work entitled.....

3. The said work entitled (*i.e. the defendants' work*) or a large part thereof reproduces or is a colourable imitation of a substantial part of the plaintiffs' said work and the defendants Y. Z. and C. D. & Co., by respectively writing and

CENTRAL LIBRARY

printing and publishing the said work entitled (*i.e. the defendants' work*) without the consent of the plaintiffs and by authorising the acts aforesaid have infringed the plaintiffs' copyright therein.

4. The plaintiffs as evidence of copying or colourable imitation will rely upon the general similarity of the plot, characterisation and incidents in the two works and upon the similarity or identity of words or phrases. Particulars exceeding three folios identifying the principal passages in which similarity or identity of word or phrase occurs are delivered herewith.

5. The defendants E. F., Ltd., are booksellers and have infringed the plaintiffs' copyright in their said work by selling and by way of trade exposing and offering for sale and by way of trading exhibiting in public a large number of copies of the work entitled (*i.e. the defendants' work*). The defendants E. F., Ltd., were at all material times aware that the said work entitled (*i.e. the defendants' work*) infringed the plaintiffs' copyright.

6. All copies of the said work entitled (*i.e. the defendants' work*) are infringing copies of the plaintiffs' said work and are the property of the plaintiffs and the defendants by selling or disposing of the same have converted the same to their own use.

7. The plaintiffs' said work had at the date of publication of the said work entitled (*i.e. the defendants' work*) a wide circulation. The publication of the said work entitled (*i.e. the defendants' work*) has caused confusion in the minds of the public between it and the plaintiffs' said work and has interfered with sales of the plaintiffs' said work and has caused the plaintiffs serious loss and damage.

8. The defendants and each of them intend unless restrained by injunction to continue the reproduction, publication and sale of copies of the said work entitled (*i.e. the defendants' work*).

The plaintiffs claim:

1. An injunction to restrain the defendants Y. Z. and C. D. & Co. and their respective servants and agents from reproducing without the consent of the plaintiffs any copies of the work entitled (*i.e. the defendants' work*) or any other copies or colourable imitations of the plaintiffs' work entitled ..... and from authorising any of the acts aforesaid.

2. An injunction to restrain each of the defendants and his or their respective servants and agents from selling by way of trade, exposing or offering for sale and by way of trade exhibiting in public without the consent of the plaintiffs any copies of the said work or any other copies or colourable imitations of the plaintiffs' said work and from authorising any of the acts aforesaid.

3. Damages for infringement of copyright and for conversion.

4. Alternatively an account of profits.

5. Delivery up to the plaintiffs of all copies of the said work in the possession of any of the defendants and all plates or other originals thereof in their possession.

6. Further or other relief.

7. Costs.

w: 1–24

CENTRAL LIBRARY

20. Claim for infringement by authorising publication by one joint author against the other.

1. The plaintiff and the defendant are the joint authors of and are jointly entitled to the copyright in an unpublished work entitled.....

2. The defendant has possession of the manuscript of the said work.

3. By letters dated the ..... day of....., 19..., and ..... day of ....., 19...., from the defendant to the plaintiff the defendant has threatened to authorise the publication of the said work and to disclose the contents of the said manuscripts to [T. V.] a publisher.

4. The plaintiff has never consented to the publication of the said work or to the disclosure of the contents of the manuscript thereof to any person.

The plaintiff claims:

1. An injunction to restrain the defendant from authorising the publication of and from disclosing to any other person the contents of the manuscript of the unpublished work of the plaintiff and the defendant entitled..... without the consent of the plaintiff.

2. Further or other relief.

3. Costs.

21. Claim for infringement of photograph.

1. The plaintiff is the owner of the copyright in a photograph of himself taken by the defendant in or about the month of....., 19.....

2. The defendant retained the negative of the said photograph and has without the consent of the plaintiff reproduced copies of the said photograph and thereby infringed the plaintiff's copyright.

3. The defendant intends unless restrained by injunction to continue the reproduction of the said photograph.

The plaintiff claims:

1. An injunction to restrain the defendant his servants and agents from reproducing without the consent of the plaintiff any copies or colourable imitations of a photograph of the plaintiff taken by the defendant in or about the month of....., 19.....

2. Damages for infringement of copyright.

3. Delivery up of the negative of the said photograph and all copies thereof in the defendant's possession or power.

4. Further or other relief.

5. Costs.

22. Claim for infringement of a film by author of dramatic work and by the company owing a film of the same work against markers, renters and exhibitors.

1. The plaintiff A. B. is the author of and the owner of the copyright in a dramatic work entitled.....

2. The plaintiff company are the makers of and the owners of the copyright in a talking film entitled..... The said film is based upon the

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

said dramatic work and was made by the plaintiff company in pursuance of a licence in writing dated the.....day of....., 19...., and signed by the plaintiff A. B. whereby the plaintiff company were authorised by the plaintiff A. B. to use the script and dramatic action and dialogue of the said dramatic work for the purposes of making the said film. Under the said licence the plaintiff A. B. is entitled to a royalty [of 10 per cent. upon the net receipts] in respect of all performances in public of the said film.

3. The defendants E. F. Ltd. have infringed the copyright of the plaintiff A. B. in the said dramatic work and have also infringed the copyright of the plaintiff company in the said film by the making of a film entitled.....

4. The said film reproduces or contains colourable imitations of a substantial part of the plot incidents and characterisation of the said dramatic work and of the plaintiff company's said film and reproduces or contains colourable imitations of a number of the scenes represented in the plaintiff company's said film. The dialogue of the said film reproduces with only colourable imitations a large part of the dialogue of the said dramatic work. Particulars of the incidents, scenes and portions of the dialogue reproduced or imitated as aforesaid (which exceed ten folios) are delivered herewith.

5. The said defendants have reproduced or colourably imitated the said dramatic work and the said film without the consent of either of the plaintiffs.

6. The defendants K. M. Ltd and the defendants E. F. Ltd. have infringed the plaintiffs' copyright in the said dramatic work and the said film respectively by letting for hire and distributing for the purposes of trade copies of the said film entitled (*i.e. the film referred to in para.* 3). The said defendants were at all material times aware that the said film infringed the plaintiff's copyright as aforesaid.

7. All the defendants have infringed the plaintiff's copyright in the said dramatic work and the said film respectively by performing or authorising or procuring the performance in public of the said film entitled (*i.e. the film referred to in para.* 3) without the consent of the plaintiffs or of either of them. The said film was performed in public by the authorisation or procurement of all the defendants at a number of cinema theatres under the control of the defendants X. Y. Ltd. during the months of....., 19...., The following are the best particulars which the plaintiffs can give until after discovery of the theatres at which performances were given as aforesaid.

Particulars

Name of Theatre.	*Dates of performances.*
The.....Theatre.	From the.....to the....., 19....
(*etc.*)	(*etc.*)

8. The plaintiff company's said film has not yet been generally released for exhibition at provincial cinema theatres and the previous exhibition by the defendants of the said film at the places aforesaid is calculated seriously to interfere with the success of the plaintiff company's said film at such theatres and to cause the plaintiffs serious loss and damage.

9. The defendants intend unless restrained by the Court to continue the acts of infringement aforesaid.

CENTRAL LIBRARY

The plaintiffs claim:

1. An injunction to restrain the defendants K. M. Ltd and R. S. Ltd. and each of them and their respective servants and agents from making, letting for hire or distributing for the purposes of trade any copies of a film entitled..... or any other film reproducing or being a colourable imitation of any substantial part of a film entitled.....or being a film by means of which the dramatic work entitled.....or any substantial part thereof may be mechanically performed or which reproduces any substantial part of the dramatic work aforesaid without the consent of the plaintiffs.

2. An injunction to restrain all the defendants from performing in public the said film entitled.....or any other film reproducing or being a colourable imitation of any substantial part of the said film entitled..... or being a film by means of which the said dramatic work may be mechanically performed or which reproduces any substantial part of the said dramatic work without the consent of the plaintiffs.

3. Damages.

4. Delivery up of all copies of the said film entitled.....and of all negatives or other originals thereof in the possession of any of the defendants.

5. Further or other relief.

6. Costs.

23. Claim for infringement by the manufacture of tape-records.

1. The plaintiff is the composer of and the owner of the copyright in the musical work entitled.....

2. The defendants in or about the month of....., 19...., without the consent of the plaintiff made a number of tape-records or other contrivances whereby the plaintiff's said work may be mechanically performed and thereby infringed the plaintiff's copyright.

3. The defendants were at all material times aware that the tape-records manufactured by them as aforesaid infringed the plaintiff's copyright.

4. The defendants have since the.....th....., 19..., sold or offered for sale a large number of records made as aforesaid and have thereby infringed the plaintiff's copyright.

5. The records made as aforesaid are infringing copies of the plaintiff's said work and the defendants by selling or otherwise disposing of the same since the.....th....., 19..., have converted the same to their own use.

The plaintiff claims:

1. An injunction to restrain the defendants, their servants and agents from infringing the plaintiff's copyright in his musical work entitled.....by making tape-records whereby the said work may be mechanically performed and from selling the same or offering the same for sale.

2. Damages for infringement.

3. Damages for conversion.

4. Delivery up of all infringing tape-records and all plates or other originals thereof.

5. Further or other relief.

6. Costs.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

24. Claim for infringement of Patents.

1. The plaintiffs are the registered legal owners of Letters Patent Nos..... [and.....] [granted to.....].

2. The said Letters Patent [and each of them] are and always have been valid, subsisting and of full force and effect.

3. The defendants have infringed the said Letters Patent [and each of them] in the manner appearing in the Particulars of Breaches delivered herewith.

The plaintiffs claim:

(1) An injunction to restrain the defendants, their servants and agents from infringing Letters Patent No[s.].....[and..... and each of them].

(2) Damages.

(3) Delivery up of all infringing machines and of all materials manufactured in infringement of the said Letters Patent [or either of them].

(4) Such further or other relief as to this Honourable Court may seem fit.

(5) Costs.

Particulars of breaches

1. .....

2. .....

3. .....

4. .....

5. .....

25. Passing off by use of trading name for goods.

1. The plaintiffs A.B. Ltd. are manufacturers of [machine belting] and carry on business at ..... in the country of ..... The defendant C.D. carried on business at ..... in ..... as a [manufacturer of belting] down to the year ..... at which date the defendant company were duly incorporated as a limited company for the purpose of carrying on the said business of the said C.D.

2. The plaintiffs A.B. Ltd. have continuously since the ..... day of ....., 19..., and their predecessors in business (A.B. trading as A.B. and Company) since the year ..... to the ..... day of....., 19...., invoiced and sold both at home and abroad [and especially in Bangladesh] very large quantities of [belting] and the word ["horse"] or [the figure of a horse] appeared upon or was attached to the said [belting] and the plaintiffs have largely advertised their [belting] in connection with the word ["horse"] or [the figure of a horse] in the above-mentioned country and until recently all [belting] invoiced, sold or advertised in connection with the word ["horse"] or [the figure of a horse] was of the plaintiff's manufacture and the word ["horse"] or [the figure of a horse] was universally understood in all the above-mentioned places to indicate that goods to which such word or figure referred were of the plaintiff's manufacture.

CENTRAL LIBRARY

3. Large quantities of the plaintiff's said [belting] are consigned to merchants in [Bangladesh] in connection with the word ["horse"] of [the figure of a horse] and the said [belting] is and has been largely sold to natives and other as ["horse"] or ["horse hair" belting] and ["horse or "horse hair" belting] is now well-known and has acquired a very high reputation.

4. Both the defendant company and the defendant C.D. have recently sold in this country and have advertised for sale in conjunction with the word ["horse"] large quantities of [belting] which [belting] was not made by the plaintiffs and some of such [belting] will probably be exported to foreign countries and there be bought and sold and many firms especially illiterate persons at home and illiterate persons abroad who may desire to purchase [belting] will be deceived by the use as aforesaid by the defendants of the word ["horse"] into the belief that they are purchasing [belting] having the aforesaid reputation and being of the plaintiff's manufacture.

5. The defendants by such wrongful sales and advertisements have endeavoured to pass off their goods as and for the goods of the plaintiffs and the use by the defendants of the word ["horse"] is calculated to deceive and will deceive the purchasers of [belting] into the belief that the goods sold by the defendants are of the plaintiff's manufacture.

6. The defendants thereaten and intend and unless restrained by injunction will continue to repeat their said acts hereinbefore set out.

The plaintiffs claim:

(1) An injunction restraining the defendants or either of them (whether by themselves, their servants agents or workmen or any of them or otherwise) from using the word ["horse"] in such a manner as to deceive purchasers into the belief that they are purchasing goods of the plaintiff's manufacture and from passing off their goods as and for goods of the plaintiff's manufacture.
(2) An account of the profits made by such wrongful acts as aforesaid or
(3) Damages.
(4) Costs.
(5) Further or other relief.

26. Infringement of registered Trade Mark and Passing off by use of name.

1. The plaintiffs are the proprietors of the trade mark ".....". The said trade mark was registered in the register of trade marks under No. ..... by the plaintiffs' predecessors in business as proprictors thereof on the ..... day of ....., 19 ...., in class ..... in respect of .....

2. The plaintiffs and their predecessors have extensively used the said trade mark upon their goods for a great number of years and have widely advertised the same and the plaintiffs continue extensively to advertise and use the said mark.

3. By reason of the matters alleged in paragraph 2 hereof [Baby food] marked with the word "....." has come to be known in the trade and to the public as the plaintiffs' [Baby food] exclusively.

4. The defendant is the proprietor of a number of retail shops at which [Baby food] amongst other things is sold.

CENTRAL LIBRARY

5. The defendant has infringed the said registered trade mark and has passed off his [Baby food] as and for the plaintiffs' [Baby food].

Particulars

Hereunder the plaintiffs will rely upon the following:

[(a) The defendant has stamped the word "....." upon his [Baby food] and offered the same for sale at his shops at ..... and ..... during the year ..... and up to the date of the writ herein:

(b) The sale at ..... on ..... 19... to MN of two packets of [Baby food] stamped with the mark ["X' "] in response to oral orders for ["X's Baby food" bacon]:

(c) .....]

In none of the above packets was the [Baby food] sold the plaintiff's [Baby food].

6. The use by the defendant of the mark ["X"] upon [Baby food] is calculated to deceive.

The plaintiff claims:

(1) An injunction restraining the defendant his servant, agent or workmen or any of them from using the plaintiff's trade mark and/or or from selling the 'Baby food' under the plaintiff's trade name in such a manner as to deceive the purchasers into the belief that they are purchasing goods as and for goods of the plaintiff's manufacture.

(2) An account of profits made by such wrongful acts as aforesaid.

(3) Damages.

(4) Costs.

(5) Further or other relief.

27. Claim for declaration, damages, and injunction in respect of interference with right of way claimed by prescription.

1. The plaintiff was and is possessed of a certain messuage and lands known as ....., in of ....., in the town of ..... , as shown on the plan annexed hereto and coloured pink and green, and from the said land there is a way (in the said plan coloured blue) leading from the said messuage over the land thereon coloured yellow to the public highway between.....and .....

2. The plaintiff and his predecessors in title of the said messuage and lands and the several occupiers thereof have for the full period of forty years and more next preceding the commencement of this action enjoyed as of right and without interruption the said way described in paragraph 1 hereof for the purpose of passing and repassing by themselves, their servants and licensees on foot and with carriages and other vehicles at all times and for all purposes and the plaintiff claims the right so to do as a legal easement of way [and the plaintiff also claims the said right of way as having been used by him and his predecessors in title the possessors of the said messuage and lands from time immemorial, deed made by all necessary parties which has since been accidentally lost or destroyed].

3. The defendant is possessed of the lands in the said town of ....., which on the plan annexed hereto are coloured yellow, through and over which the plaintiff's said way runs.

CENTRAL LIBRARY

4. On or about the ..... day of ....., 19..., the defendant [locked the gates at each end of the plaintiff's said way, as shown on the said plan, in exercise of a pretended right to prevent the plaintiff from using the said way and the defendant has ever since kept the said gates locked and has so obstructed, hindered and prevented the plaintiff from exercising his said right of way as aforesaid and the defendant threatens and intends to continue so to do].

The plaintiff claims:

(1) A declaration that the plaintiff is entitled to a right of way [from .....in the town of ..... to.....on the public highway between.....and .....in the town aforesaid, *or as may be, describing accurately the position of the way, its termini, and, if material, its width.*

(2) An injunction restraining the defendant, his servants and agents from placing or allowing to be placed on the said way anything substantially restricting, preventing or otherwise interfering with the reasonable enjoyment of the said way by the plaintiff, his servants and licensees on foot and with carriages, motor vehicles and other conveyances at all times and for all purposes and from doing any act whereby the plaintiff may be hindered or obstructed in the free use thereof as aforesaid.

(3) Damages.

(4) Costs.

(5) Further or other relief.

28. Petition for Ad interim injunction in Suit for Injunction.

Suit No..... of 1988
IN THE COURT OF
..... residing at No.
carrying on business/working for gain at No.
within the jurisdiction aforesaid

Petitioner

Vs

(1) ..... residing at No.
carrying on business/working for gain at No.
within the jurisdiction aforesaid

(2) ..... residing at No.
carrying on business]working for gain at No.
within the jurisdiction aforesaid. (Add as many respondents as there are defendants in the suit arranging serially).

Respondents

To

The Hon'ble Mr..... Chief Justice and his Companion Justices of this Hon'ble Court

The humble petition of the petitioner above named

Most respectfully sheweth:

1. Your petitioner has instituted the said suit on day of inter alia for (set out the concise statement by altering the word plaintiff to your

CENTRAL LIBRARY

petitioner). The statements contained in the plaint are true. Your petitioner would crave leave to refer to the plaint at the time of hearing.

2. (Set out serially the material paragraphs of the plaint excluding the cause of action and jurisdiction and Court fees paragraph altering the word plaintiff to your petitioner and the defendants to respondents with respective serial numbers).

3. (Set out the facts showing the conducts of the respondents whereby balance of convenience is overwhelmingly in favour of the order being passed as prayed for by the petitioner).

4. Pecuniary compensation will not be an adequate remedy for the petitioner.

5. Your petitioner apprehends that unless this Hon'ble Court issues an injunction restraining the respondents, their servants and agents by an injunction (set out the acts complained of by the respondents).

6. Your petitioner submits that unless the order as prayed for by the petitioner is passed your petitioner would suffer irreparable loss and injury.

7. The application is bona fide and made for the interest of justice.

Your petitioner, therefore, prays to Your Lordships for an order—

(a) An injunction restraining the respondents and each of them, their servants and agets (set out the wrongful acts complained of);
(b) (If necessary) an injunction directing the respondents and each of them (set out the wrongful acts or damages which are to be restored).
(c) Ad interim order in terms of prayers (a) and (b).
(d) Such further or other order or orders direction/ directions be given as this Hon'ble Court may deem fit and proper.
(e) The respondents be directed to pay the costs of this application to the petitioner.

And your petitioner as in duty bound shall ever pray.

CENTRAL LIBRARY

RELEVANT SECTIONS OF STATUTES

Code of Civil Procedure, 1908

Sec. 94. Supplemental proceedings.—In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Sec. 151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

ORDER XXXIX

Temporary Injunctions and Interlocutory Orders
Temporary Injunctions

1. Cases in which temporary injunction may be granted.—Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to (defrauding) his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or to make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff, in relation to any property in dispute in the suits as the Court thinks fit, until the disposal of the suit or until further order.

2. Injunction to restrain repetition or continuance of breach.—(1) In any suit for restraining the defendant from committing a breach of contract or

CENTRAL LIBRARY

other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction on such terms as to the duration, of the injunction keeping an account, giving security, or otherwise as the court thinks fit.

2-A. Consequence of disobedience or breach of injunction.—(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made the Court granting the injunction or making the order or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

3. Before granting injunction, Court to direct notice to opposite party.—The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction direct notice of the application for the same to be given to the opposite party.

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application,

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

3-A. Court to dispose of application for injunction within thirty days.—Where an injunction has been granted without giving notice to the opposite party the court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.

CENTRAL LIBRARY

4. Order for injunction may be discharged, varied or set aside.—Any order for an injunction may be discharged, or varied or set aside by the court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the court is satisfied that the order has caused undue hardship to that party.

5. Injunction to corporation binding on its officers.—An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory Orders

6. Power to order interim sale.—The court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7. Detention preservation, inspection etc. of subject-matter of suit.—(1) The court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis* to persons authorized to enter under this rule.

8. Application for such orders to be after notice.—(1) An application by the plaintiff for an order under rule 6 or rule 7 may be made at any time after institution of the suit.

(2) An application by the defendant for a like order may be made at any time after appearance.

CENTRAL LIBRARY

(3) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.

9. When party may be put in immediate possession of land the subject-matter of suit.—Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter or a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently orderd to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the court), be put in immediate possession of the land or tenure;

and the court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Deposit of money, etc., in Court.—Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the court may order the same to be deposited in court or delivered to such last-named party, with or without security, subject to the further direction of the court.

Specific Relief Act, 1963

Sec. 36. Preventive relief how granted.—Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

Sec. 37. Temporary and perpetual injunctions.—(1) Temporary injunctions are such as to continue until a specified time, or until the further order of the court, *and* they may be granted at any *stage* of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Sec. 38. Perpetual injunction when granted.—(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted *to the plaintiff* to prevent the breach of an obligation existing *in his favour*, whether expressly or by implication.

(2) When *any* such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

CENTRAL LIBRARY

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused by the invasion;

(*c*) where the invasion is such that *compensation in money* would not afford adequate relief;

(*d*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Sec. 39. Mandatory injunctions.—When, to prevent the breach of an obligation, it is necessary to compel the performence of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Sec. 40. Damages in lieu of, or in addition to, injunction.—(1) The plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the Court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

Sec. 41. Injunction when refused.—An injunction cannot be granted—

(*a*) *to restrain any person from prosecuting* a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) *to restrain any person from instituting or prosecuting any proceeding in a court not subordinate* to that from which the injunction is sought;

(*c*) to restrain *any person* from applying to any legislative body;

(*d*) *to restrain any person from instituting or prosecuting any proceeding in a criminal matter*:

(*e*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*f*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*g*) to prevent a continuing breach in which the *plaintiff* has acquiesced;

(*h*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(*i*) when the conduct of the *plaintiff* or his agents has been such as to disentitle him to the assistance of the court;

(*j*) when the plaintiff has no personal interest in the matter.

Sec. 42. Injunction to perform negative agreement.—Notwithstanding *anything contained in clause* (*c*) *of section* 41, where a contract comprises an affrmative agreement to do a certain act, coupled with a negative agreement,

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

Code of Criminal Procedure, 1973

Sec. 142. Injunction pending inquiry.—(1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of any thing done in good faith by a Magistrate under this section.

Sec. 143. Magistrate may prohibit repetition or continuance of public nuisance.—A District Magistrate or Sub-divisional Magistrate, or any other *Executive* Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860) or any special or local law.

C.—*Urgent Cases of Nuisance or Apprehended Danger*

Sec. 144. Power to issue order in urgent cases of nuisance or apprehended danger.—(1) In cases where, in the opinion of a *District Magistrate, a Sub-divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government in this behalf* there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with *respect to* certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, *ex parte*.

(3) An order under this section may be directed to a particular individual, *or to persons residing in a particular place or area*, or to the public generally when frequenting or visiting a particular place *or area*.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any

CENTRAL LIBRARY

affray, it may by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him, or by his predecessor-in-office.

(6) *The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section* (4).

(7) Where such an application *under sub-section* (5) *or sub-section* (6) *is received the Magistrate or the State Government, as the case may be,* shall *afford* to the applicant an early opportunity of appearing before him or it either in person or by pleader and showing cause against the order; and, if the Magistrate *or the State Government, as the case may be,* rejects the application wholly or in part, he or it shall record in writing his reasons for so doing.

Sec. 145. Procedure where dispute concerning land or water is likely to cause breach of the peace.—(1) Whenever *an Executive* Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, *on a specified date and time,* and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of *the parties* to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, *receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary,* and, if possible decide whether any and which of the parties was, at the date of the order *made by him under sub-section*(*1*), in possession of the subject of *dispute*:

Provided that, if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed, within two months next before the date *on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section*(*1*), he may treat the party so dispossessed as if *that party* had been in possession *on the date of his order under sub-section*(*1*).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

CENTRAL LIBRARY

(6) (*a*) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(*b*) *The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).*

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Sec. 147. Disputes concerning rights of use of land or water.—(1) Whenever *an Executive* Magistrate is satisfied, from *the* report *of a police officer or upon* other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he *shall* make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend *his* Court in person or by pleader *on a specified date and time* and to put in written statements of their respective claims.

Explanation.—The expression "land or water" has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, as far as may be, *apply* in the case of such inquiry.

(3) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right, *including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:*

CENTRAL LIBRARY

Provided that no such order shall be made where the right exercisable at all times of the year, unless such right has been exercised within three months next before the *receipt under sub-section(1) of the report of a police officer or other information leading to the* institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such *receipt*.

(4) *When in any proceedings commenced under sub-section(1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section(1):*

and when in any proceedings commenced under sub-section(1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section(1) of section 145.

Indian Easements Act, 1882

Sec. 35. Injunction to restrain disturbance.—Subject to the provisions of the Specific Relief Act, 1877 (1 of 1877), Secs. 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(*a*) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this Chapter;

(*b*) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement.

Copyright Act, 1957

Sec. 55. Civil remedies for infringement of copyright.—(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the yhole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Trade and Merchandise Markes Act, 1958

105. Suit for infringement, ect. to be instituted before District Court.—No suit—

(*a*) for the infringement of a registered trade mark; or
(*b*) relating to any right in a registered trade mark; or
(*c*) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered;

shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

106. Reliefs in suits for infringement or for passing off.—(1) relief which a court may grant in any suit for infringement or for passing off referred to in sec. 105 includes an injunction (subject to such terms, if any, as the Court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

(2) Notwithstanding anything contained in sub-section (1), the Court shall not grant relief by way of damages (other than nominal damages) or an account of profits in any case—

(*a*) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark; or
(*b*) where in a suit for infringement the defendant satisfies the Court—
(*i*) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and
(*ii*) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods in respect of which it was registered; or
(*c*) where in a suit for passing off the defendant satisfies the Court—
(*i*) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use; and
(*ii*) that when he became aware of the existence and nature of the plaintiff's trade mark, he forthwith ceased to use the trade mark complained of.

Arbitration Act, 1940

Sec. 18. Power of Court to pass interim orders.—(1) Notwithstanding anything contained in section 17, at any time after filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award,

CENTRAL LIBRARY

or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

Sec. 41. Procedure and powers of Court.—Subject to the provisions of this Act and of rules made thereunder—

(*a*) the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(*b*) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (*b*) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

THE SECOND SCHEDULE

[*See* SECTION 41]

POWERS OF COURT

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

cf. Order XXXIX, Rules 1 and 6, Code of Civil Procedure, 1908.

2. Securing the amount in difference in the reference.

cf. Order XXXVIII, Rules 1, 2 and 5, Code of Civil Procedure.

3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

cf. Order XXXIX, Rules 6 and 7, Code of Civil Procedure.

4. Interim injunctions or the appointment of a receiver.

cf. Order XXXIX, Rules 1 and 2 and Order XL, Rule 1, Code of Civil Procedure, 1908.

5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

cf. Order XXXII, Rules 3 and 15, Code of Civil Procedure, 1908. While Order XXXII makes provision for the appointment of a guardian of a defendant only, the Court will have authority under this para to appoint a guardian of either side.

1. General.—Section 41(*a*) makes the provisions of the Code of Civil Procedure applicable to all proceedings before the Court under the provisions

CENTRAL LIBRARY

of this Act provided such provisions are not inconsistent with the provisions of this Act. Clause (*b*) of the same section invests the court with powers relating to the matters mentioned in paragraphs 1 to 5 of the Second Schedule. The Court is to exercise such powers with reference to these matters as it has for the purposes of, and in relation to, any proceedings before the Court, *i.e.* all such powers as it has under the Code of Civil Procedure or any other enactment for the time being in force.

2. Interim injunctions.—While the Court has power to issue an interim injunction during the course of an arbitration proceeding, it will also have power to entertain an application for setting aside an *ex parte* injunction, even though the suit in which *ex parte* injunction was passed, may have been stayed under section 34.

The Companies Act, 1956

Sec. 442. Power of Court to stay or restrain proceedings against company.—At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind up the company, to restrain further proceedings in the suit or proceeding;

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit.

Rule 105. Stay of suit or proceeding pending petition.—An application under section 442 for stay of any suit or proceeding shall be made upon notice to all the parties to the suit or proceeding sought to be stayed.

Constitution of India

Art. 226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in th enature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

CENTRAL LIBRARY

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or, in any proceedings relating to, a petition under clause (1), without—

(*a*) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(*b*) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open, and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this Article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

CENTRAL LIBRARY

INDEX

(Figures refer to pages in the Text)

A

ACCOUNT and infringement of Patent, 343.
and waste, 266.
ACCRUAL of cause of action in compensation-suit, 54.
ACQUIESCENCE and damages, 68.
distinguished from delay, 73.
submission, 70.
effect of, 68-71, 238, 240, 263, 264, 306, 318.
ACT detrimental to land, 237.
ADEQUATE RELIEF: meaning of, 65, 151, 296.
ADJUSTED decree: execution of, 116.
ADMINISTRATOR and Injunction, 203-205.
ADVANTAGE, unfair, 176-177.
ADVOCATE-GENERAL and public nuisance, 270.
AFFIRMATIVE agreement, 161, 165, 169.
and specific performance, 169.
AGREEMENT, affirmative, 161, 165, 169,
negative, 161, 165, 171.
vague, 154.
void, 149.
voidable, 150
AGRICULTURAL lease and waste, 236.
AIR, easement of, 277, 282-286
unpolluted, 277.
ALIENATION *pendente lite*, 128-132.
ALTERATION of building and waste, 240.
AMERICAN case-law: weight of, 5.
AMERICAN Cyanamid case, 78.
ANCIENT LIGHT, 295
ANTICIPATORY INJUNCTION [54]
ANTON Piller order, 135.
APPEAL,
and Injunction, 108.
against exercise of discretion, 11
from Injunction *pendente lite*, 131.
temporary Injunction pending, 16.
APPLICATION for attachment, 303
hearing of, 103.
Injunction, 94-97.
to commit for contempt, 53.
dissolve Injunction, 106.

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING ·
CENTRAL LIBRARY

APPOINTMENT of Receiver, 8, 9, 11, 141.
and locality, 40.
discretion in, 11.
pendente lite, 131.
ARBITRATION : contact to refer to, [54], 156.
ASSOCIATION and Injunction, 190.
ATTACHMENT and appointment of Receiver, 6, 8.
corporation, 207.
Injunction, 208, 303.
AWARD (arbitrator's) and specific performance, 156.
of damages, 6, 293.
discretion in, 293.

B

BAR to Relief by Limitation, 71, 72, 73.
specific performance, 180, 181.
BILL of Peace, 165.
BREACH of contract, 90, 91.
of Injunction, 51.
of Trust, 199.
BUILDING and waste, 239,
by co-sharer, 260-264.
demolition of, 262.
BURDEN of proof of acquiescence, 70.
inconvenience, 75.

C

CASE-LAW (American) : weight of, 5.
(English) : weight of, 4, 5.
CASTE and Injunction, 193.
CHILD custody and education of, 345.
CIRCUMSTANCES peculiar to India, 4, 5.
CIVIL Procedure Code, 2 39, 53, 95-99, 104, 107, 108, 109, 110, 144, 344.
CLUB and Injunction, 190-193.
COMBINATION of Relief, 274.
COMPANY (Public) and attachment, 208.
compulsory powers, 275.
Injunction against, 188.
COMPENSATION for wrongful Injunction, 54.
Suit: Limitation, 111.
COMPULSORY powers and nuisance, 275.
CONDITIONAL Injunction, 98.
CONDUCT of party seeking Injunction, 66-75.
CONFIDENTIAL relation and Injunction, 199-203.
CONJUGAL RIGHTS and Injunction, 345.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

CONSENT, Injunction by, 104.
to breach of Injunction, 51.
CONSTRUCTIVE POSSESSION, 226.
and Mamlatdar's Courts, 231.
CONTEMPT of Court, 52.
CONTRACT Act (Indian), 139, 40.
breach of, 157.
conditions of Injunction regarding, 146.
incapable of specific performance, 150-157.
meaning of term, 148.
revocable, 154.
ultra vires, 155, 189.
voidable, 150.
CONVENIENCE, balance of, in grant of relief, 75.
COPYRIGHT Act, 317.
and Injunctions, [54], 318-327.
registration, 316.
selection, 320.
in design, 316.
translation, 319.
meaning of term, 315.
CORPORATION, 205-208.
See COMPANY.
CORPORATION, Municipal: Injunction against, 205-208.
libel by, 222.
parties to suit against, 207.
trespass by, 230.
CO-SHARER and building, 260-264.
and cultivation, 243, 258.
excavation, 241, 264.
trespass, 227-232.
waste, 232-235.
meaning of term, 248.
rules governing Injunctions, 255.
COSTS, 110.
COURTS which may grant Injunctions, 44.
COVENANT, affirmative, 161.
coupled with negative, 165.
negative, 161.
restrictive, 275.
CRIME, no jurisdiction to prevent, 23.
CRIMINAL matter in Injunction, 23, 118.
CULTIVATION
by co-sharer, 258.
waste by, 243.
CUSTOM of easement of privacy, 310.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

D

DAMAGE and libel, 219.
and malicious words, 221.
slander, 220.
irreparable, 62, 63.
pendente lite, 128.
DAMAGES and abuse of joint property, 253.
and acquiescence, 146.
breach of contract, 146.
contract, 146.
copyright, 318.
infringement of copyright, 326.
patent, 337.
trade-mark, 330.
nuisance, 269, 270, 271.
obstruction of light or air, 286, 289.
patent, 337.
tort, 212.
trade-mark, 330.
trespass, 228.
waste, 253.
award of, 84-91.
combined with Injunction, 92, 217.
enquiry as to, 91.
in lieu of Injunction, 85, 275.
liquidation of, 175.
suit for, 62.
when no standard to ascertain, 216.
DANGER, irreparable, 273.
DATE from which Injunction operates, 49.
DECREE for joint possession, 253.
DEFAMATION, 219.
DELAY and mandatory Injunction, 71.
by co-sharer, 249.
landlord, 236.
distinguished from acquiescence, 73.
in application for Injunction, 71, 175, 311
contract, 175.
trade-mark case, 336.
trespass case, 240.
DEMOLITION of building, 262.
DEPENDENT Talookdar and waste, 247
DESIGN and copyright, 316.
DETRIMENTAL to land: meaning of terms, 237.
DISCHARGE of temporary Injunction, 105-108.
DISCRETION, appeal against exercise of, 11.
in award of damages, 293.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

DISCRETION (*contd.*)
compulsory powers, 275.
grant of relief, 42-43, 167.
mandatory Injunction, 80-84.
restraint of libel, 222-224.
trespass, 227.
of Civil Court, [53]
DIMINUTION of light, 294, 303.
DISPOSITION of property *pendente lite*, 132.
DISSOLUTION of temporary Injunction, 105-108.
DOCUMENT, registration of, 157-161.
DONOR, injunction against donee, 198.
DURATION of Injunction, 49-50.
DUTY, remedy for neglect of, 8.
DWELLING-HOUSE, 252.

E

EASEMENT
in water, 304.
meaning of term, 304.
of light, 290-304.
privacy, 309.
support, 304.
violation of, 280-310.
water, 304.
way, 307.
EFFECT of Injunction, 49.
EJECTMENT in trespass, 227.
ELECTION and right of way, 308.
ENCROACHMENT, 229.
ENFORCEMENT of Injunctions, 48, 111.
mandatory Injunction, 145.
perpetual Injunction, 145.
temporary Injunction, 143.
See Injunction.
ENGLISH case-law and Injunctions in India, 4, 5.
Mofussil Courts, 3.
Procedure, 4.
discretion in libel, 222.
restraint of proceeding, 114.
ENQUIRY as to damages, 91.
acts in personan, 32.
EQUITABLE Jurisdiction of High Court, 115.
Relief: origin of, 21.
EQUITY and Presidency High Court,
rules of English Courts of, 4, 5.
ERRONEOUS Injunction, effect of, 54.
ESSENTIALS of copyright, 317.
to grant Injunction, 29-32.
pendente lite, 127.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

EVIDENCE in support of application for Injunction, 101-103.
EXCAVATION and waste, 264, 265.
by co-sharer, 248.
EXECUTION in
wrongful sale in, 122.
EXECUTOR and Injunction, 203-205.
EX-PARTE Injunction, 95, 96, 97.
motion for temporary Injunction, 95.

F

FORBEARANCE. *See* ACQUIESCENCE.
FORM OF APPLICATION : injunction 353.
FRAUDULENT decree: remedy for, 125.
disposition of property *pendente lite*, 132-133.
FUTURE nuisance, 273.

G

GRANT of Injunction: by which Courts, 44.
essentials to, 29-32.
general rules as to, 55.
restrictions to, 28.
and *see* INJUNCTION.

H

HARDSHIP, discretion to issue Injunction involving, 178.
unforeseen, 178-179.
HEARING of application for Injunction, 103.
HIGH COURT, inherent equitable jurisdiction of, 2.
HINDU female heir and waste, 235.
joint possession: rights of, 250-253.
HUSBAND and wife: Injunctions between, 345.

I

IMMOVABLE property *pendente lite*, 128.
IMPRISONMENT for breach of injunctions, 111.
INCONVENIENCE: burden of proof of, 75.
INFRINGEMENT of copyright, 318.
patent, 341.
trade-mark, 332.
INHERENT equitable jurisdiction of High Court, 2.
INJUNCTION and abuse of joint property, 255.
acquiescence, 68-71, 318.
administrator, 203-205.
American case-law, 5.
appeal, 108.

CENTRAL LIBRARY

INJUNCTION (*contd.*)
and appointment of Receiver, 9.
arbitration, 143.
association, 190-194.
award, 156.
breach of contract, 150, 151.
building, 260-264.
caste, 193, 194.
circumstances peculiar to India, 4, 5.
and club, 191.
company (public), 188.
confidential communication, 199
contract, 143.
ultra vires, 101.
copyright, 318.
corporation (municipal), 205.
co-sharer, 255.
costs, 110.
court of revisional jurisdiction, 48.
court-fee, 110.
covenant, 161-171.
criminal matter, 30, 31.
cultivation by co-sharer, 259.
defamation, 219.
delay, 71-75, 240.
demolition of building, 239.
easement, 282-311.
in water, 304-306.
of air, 286.
light, 290.
privacy, 309.
support, 304.
way, 306-310.
English case-law, 4, 5.
Courts of Equity, 3.
Procedure, 4.
evidence, 101-103.
excavation by co-sharer, 264.
executor, 203.
forms of application, 353.
fraudulent decree, 125.
future nuisance, 270.
Hindu female heir, 235.
illegal association, 190.
institution of suit, 122.
irreparable injury, 62.
joinder of parties, 26.
joint property, 249, 250.
jurisdiction, 44, 122, 146, 223.
lecture, 202.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

INJUNCTION (*contd.*)
and
legal representative, 204.
legislative council, 193.
letters, 202.
libel, 219.
limitation, 111.
malicious words, 220-221.
mortgages, 194-197.
multiplicity of proceedings, 120.
municipal corporation, 35, 205.
natural rights, 277.
noise, 273.
nuisance, 270.
partnership, 185.
patent, 341.
personal wrongs, 219
privity of title, 274.
public
company, 188.
nuisance, 273.
publication of lectures, 202.
publication of letters, 202.
registration, 157-161.
repetition of wrongful act, 273.
representative (legal), 203-205.
restraint of marriage, 164.
trade, 162, 163.
restrictive covenant, 275.
review, 109.
revision, 109.
revocable contract, 154.
right of
support, 280.
slander, 220.
specific performance, 171.
test of jurisdiction, 28.
third party, 197.
title, 221, 224.
tort, 209-218.
trade-mark, 322-337.
trade-secret, 199.
trespass, 227-231, 248, 255-267.
trust, 198-203.
unfair advantage, 176-177.
unforeseen hardship, 178.
void agreement, 149.
voidable agreement, 150.
waste, 234.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

INJUNCTION (*contd.*)
when suit not pending, 30.
wrongful act of special nature, 344.
sale, 122-126.
breach of, 51-54.
by consent, 104.
classification of, 23
combined with damages, 92.
compensation for, 54.
courts by which granted, 44.
damages combined with, 92.
date of operation of, 49.
discharge of, 105.
discretion in grant of, 42-43.
enforcement of, 48.
erroneous, 54.
essentials to relief by, 29-32.
ex-parte, 96, 97.
IN PERSONAM : action of equity, 32.
interim, 98.
mandatory, 18-21.
not retroactive, 51.
operation of, 49-51.
pendente lite, 126.
perpetual, 7, 17-18.
restriction to grants of, 29.
subject-matter of, 21.
temporary, 1, 13-17.
practice relating to, 94-112.
terms (upon), 98.
upon terms, 98-101.
without notice, 97.
writ of, 13.
INJURY, inevitable, 60.
irreparable, 62.
means, 53, 261.
not continuing, 61
prospective, 271.
substantial, 265.
INTERIM Injunction, [35], 45.
order, 97.
sale, 67.
IRREPARABLE injury,
meaning of term, 62.
INSTITUTION of suit and Injunction, 95.

J

JOINDER of parties, 26.
JOINT possession: decree for, 253.
under Hindu Law, 252.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

JOINT POSSESSION (*contd.*)
property, abuse of, 250.
and waste, 249.
remedies for abuse of, 253.
user, acts of, 249.
JUDICIAL proceeding: Injunction in respect of, 120.
stay of, 121.
JURISDICTION,
and Injunction, 39.
in libel, 222, 223.
nuisance, 270.
obstruction of light or air: 286.
slander, 220.
tort, 209.
trespass, 227.
pendente lite, 127.
locality, 32, 33.
equitable: of Presidency High Court, 39.
limitations to, 32, 37.
test of, 38.

L

LACHES, 71, 72.
and limitation, 74.
LAND and Injunction, 34.
outside jurisdiction, 195, 196.
LANDLORD and waste, 235.
delay by, 238.
LEASE, agricultural and waste, 236.
Injunction in respect of, 235.
non-agricultural and waste, 243.
LEGAL REPRESENTATIVE and Injunction, 203.
meaning of term, 204.
LESSEE and lessor: Injunction between, 197.
LESSOR and lessee: Injunction between, 197.
LETTERS: publication of, 202.
LIBEL and Injunction, 211, 219.
LIGHT: diminution of, 287, 288.
easement of, 286, 290.
natural right of, 286.
obstruction of, 290.
reflected: and obstruction, 288.
LIMIT of jurisdiction, 32, 37.
LIMITATION and delay, 111.
suit for Injunction, 111.
in tort, 216.
trusts, 218.
LOCALITY and appointment of Receiver, 43.
jurisdiction (English), 43.
jurisdiction (Indian), 43.

CENTRAL LIBRARY

M

MALICIOUS words and Injunction, 221-224.
MANDATORY Injunction, 18, 80, 145, 310.
and acquiescence, 84.
delay, 84.
discretion, 80.
libel, 81.
notice of objection, 83.
other injunction, 84.
on interlocutory application, 83.
MARRIAGE and Injunction, 345.
MINE and waste, 233.
MOFUSSIL Court and action *in personam*, 35.
English case-law, 4.
power to commit for contempt, 49.
jurisdiction of, 35.
MORTGAGE and Injunction, 247. -
MORTGAGEE and Mortgagor: Injunction between, 247.
waste by, 247.
MORTGAGOR and Mortgagee: Injunction between, 24.
waste by, 247.
MOTION, *ex-parte*, 95.
for Rule *nisi*, 97.
to dissolve Injunction, 105.
MUNICIPAL Corporation, 205.
MULTIPLICITY of Proceedings, 120.

N

NATURAL rights and nuisance, 277-280.
meaning of term, 277.
stream: meaning of term, 279.
NEGATIVE agreement, 165, 171.
coupled with affirmative, 165.
NOISE and Injunction, 273.
NON-AGRICULTURAL lease and waste, 243.
NOTICE
of application for Injunction, 95.
motion, 97.
in attachment, 303.
objection, 97, 311.
NUISANCE and compulsory powers, 277.
damages, 269, 270.
easement, 277, 280.
damages for, 269.
in water, 304.
of air, 282.
light, 286.
support, 304.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

NUISANCE (*contd.*)
Injunction, 277–310.
natural rights, 277.
future, 271.
generally, 268.
Injunction against, 270.
meaning of term, 270.
public: Injunction against, 270.
restrictive covenant against, 275.

O

OBJECTION noeice of, 97.
OBLIGATION, breach of: Injunction for, 51.
meaning of term, 51.
OBSTRUCTION of air, 277, 282.
light, 278, 286, 290.
right of way, 306, 307.
ONUS of proof of acquiescence, 70.
OPERATION of Injunction, 49.

P

PARENT, Injunction against, 341.
PARTIES to suit for Injunction, 26-29, 415.
PARTITION,
remedy by, 253.
PARTNER, Injunction against, 185-188.
PARTNERSHIP, Injunction in, 185-188.
PARTY, death of, 205.
to suit for Injunction, 26.
PARTY-WALL: tenants-in-common of, 263.
PATENT, infringement of, 341.
and account, 343.
damages, 343.
meaning of term, 317.
PENAL Law: no relief to enforce, 29.
PENDENTE LITE, Injunction, 14, 127-133.
PERMISSIVE waste, 233.
PERPETUAL Injunctions, 1, 7, 17, 18, 216, 217, 227.
dissolve interlocutory injunction, 105.
enforcement, 111.
tort, 213.
trespass, 227.
PERSONAL wrong and Injunction, 219.
meaning of term, 219.
PLAINT, *interim* Injunction before, 31.
PLEADING, rules of, 94.
POLLUTION of air, 277.
water, 279.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

POSSESSION and trespass, 225-227.
Injunctions, 94-105.
PRESCRIPTION and easement of air, 277, 282.
light, 286.
way, 306, 307.
PRESUMPTION of damage in slander, 220.
PREVENTIVE relief, 7, 12.
PRIMA FACIE case for Injunction, 57.
PRIVACY, easement of, 309.
Injunction to preserve, 310.
PRIVATE nuisance: meaning of term, 268.
PRIVITY of title and waste, 274.
PROCEDURE, English, 13.
PROCEEDINGS, control and stay of, 113.
PROOF in application for Injunction, 101-103.
pendente lite, 131.
inconvenience: burden of, 75.
of acquiescence: burden of, 70.
PROPERTY, disposition of, *pendente lite*, 127-133.
PROTECTIVE relief, 10, 11, 376.
PROVISIONAL remedy, 8.
PUBLIC body:
company and Injunction, 188.
nuisance and Injunction, 269.
meaning of term, 269.
officer: limit of interference with, 270.
road, 307-309.

Q

QUIA TIMET: principle of, 9, 10.

R

RECEIVER and cerditor, 10.
appointment of, 2, 9.
discretion in 9.
pendente lite, 131.
REGISTRATION of document, 157-161.
RELIEF, adequate, 65.
meaning of term, 151, 296.
(equitable) origin of, 21.
essentials to grant of, 29-32.
grant of: general rules for, 55.
specifiic, 6, 7.
RELIEFS, combination of, 274.
RELIGIOUS association, 193.
REMEDY for abuse of joint property, 253.
breach of contract, 157.
fraudulent decree, 125.

CENTRAL LIBRARY

REMEDY (*contd.*)
non-compliance with permanent Injunction, 51.
public nuisance, 270.
tort, 212.
other than Injunction, 8.
provisional, 8.
REPETITION of wrongful act, 273.
REPRESENTATIVE (Legal) and Injunction, 203-205.
RESTRAINT of breach of agreement, 171.
marriage, 164.
proceeding, 113-122.
sale, 122-126.
trade, 163.
RESTRICTION to grant of Injunction, 29
RESTRICTIVE covenant, 275.
REVERSIONER and nuisance, 269.
REVIEW in matter of Injunction, 109.
REVISION in matter of Injunction, 48.
REVOCABLE contract, 154.
RIGHT of way, 126, 304-309.
and acquiescence, 307.
RIGHTS, conjugal and Injunction, 345.
natural: meaning of term, 277.
RULE *nisi* for Injunction, 97.
RYOT and suit for trespass, 239, 240.
waste by cutting trees, 242, 243.

S

SALE Injunction in restraint of, 122.
SELECTION and copyright, 320.
SLANDER, 220.
of title, 221.
SMELL, nuisance by, 273.
SMOKE, nuisance by, 273.
SOCIETY, Injunction in respect of, 191.
SOLICITOR and confidential relation, 201.
SPECIFIC performance, 7, 8, 151, 159-169, 171.
bars to relief by, 180-182.
contract incapable of, 151.
variation in, 181.
who may obtain, 179.
whom granted against, 171.
Relief
Injunction prior to, 1
STAY of proceeding, 113-115.
STREAM, natural: meaning of term, 279.
SUBJECT-MATTER of Injunction, 21.
SUPPORT: easement of, 279, 304.
STRANGER to Title and Injunction, 266.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

T

TALOOKDAR, dependant, and waste, 247.
TEMPORARY Injunction, [53], 2, 7, 13-17, 56.
against wrongful sale, 122.
discharge of, 105-108.
dissolution of, 105-108.
ex-parte, motion for, 95-97.
in contract, 146.
pendente lite, 127.
practice relating to, 94.
variance of, 105-108.
TENANT for life and waste, 235.
years and waste, 235.
in common and trespass, 249.
tail and waste, 235.
TERMS, Injunction upon, 98.
THIRD party and Injunction, 197.
mortgage, 195.
wrongful sale, 125.
TITLE of book and copyright, 315.
privity of and Injunction, 266.
TORT, classification of, 211.
Injunction in case of, 209.
jurisdiction in, 210.
limitation in, 218.
meaning of term, 210.
principles of relief in, 214.
remedies in case of, 212.
who may sue and be sued, 211.
TRADE, restraint of, 162.
TRADE-MARK and damages, 330.
Injunction, [54], 332-337.
meaning of term, 328, 329.
TRADE-SECRET and Injunction, 199.
TRANSLATION and copyright, 315.
TREE
waste by cutting, 242-243.
TRESPASS and co-sharer, 248-254.
tenant-in-common, 226.
distinguished from waste, 227.
Injunction against, 227-231.
meaning of term, 225.
who may sue and be sued in, 231.
TRUST
Injunction in case of, 199-203.
meaning of term, 199.
parties to suit, 202.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

TRUSTEE and waste, 266.
Injunction against, 199-203.

U

ULTRA VIRES contract, 100, 101.
UNDERTAKING, equivalent to injunction, 99.
UNDERTAKING in Injunction upon terms, 98.
UNFAIR advantage, 176.
UNPOLLUTED air: meaning of term, 277.

V

VARIANCE
of Injunction, 105-108.
appeal from, 108.
VENDOR and waste, 248.
VOID agreement, and Injunction, 149.
VOIDABLE agreement, 150.
VOLUNTARY waste, 233.

W

WASTE and account, 266.
alteration of building, 263.
co-sharer, 248-249.
cultivation, 243.
dependent talookdar, 247.
distinction between, and trespass, 233.
excavation, 241.
Hindu female heir, 235.
joint property, 250.
user, 251.
landlord, 235.
mortgagee, 247.
mortgagor, 247.
non-agricultural lease, 243.
privity of title, 266.
purchaser, 248.
reversioner, 266.
tenant for life, 235.
years, 235.
in tail, 235.
trees, 242.
trustee, 266.
vendor, 248.
distinguished from trespass, 233.
estate without impeachment of, 233.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

WASTE and (*contd.*)
Injunction against, 234.
meaning of term, 232.
permissive, 233.
voluntary, 233.
WATER, casement in, 304.
natural rights in, 278.
use of, and nuisance, 278, 279.
WAY, easement of, 306, 307.
and acquiescence, 306.
Injunction against obstruction of, 307,
WIFE and husband, Injunction between, 345.
WITHDRAWAL of support, 304.
WRONGFUL act, repetition of, 273.
of special nature, 344-345.
Injunction: limitation of compensation, 54.
sale: Injunction against, 122-126.

LAW COLLEGE
LIBRARY
Hastre Road Unit

H2865